APPENDIX

DEC 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 454

UNITED TRANSPORTATION UNION,

Petitioner,

vs.

THE STATE BAR OF MICHIGAN,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF MICHIGAN

PETITION FOR CERTIORARI FILED JULY 22, 1970
CERTIORARI GRANTED OCTOBER 12, 1970

INDEX

	PAGE
Relevant Docket Entries	1
Bill of Complaint, Filed Jan. 28, 1959	5
Answer to Bill of Complaint, Filed June 9, 1959	12
Plaintiff's Reply to Defendants' Answer, Filed June 16, 1959	20
Plaintiff's Statement of Claim, Filed April 11, 1961	29
Pretrial Summary by the Court, Filed April 11, 1961	30
Concise Statement of Defense, Filed April 12, 1961	31
Transcript of Testimony, had on June 27, 1961	34
Testimony of David J. Walsh, witness on behalf of plaintiff:	
Direct Examination	62
Cross Examination	89
Redirect Examination	105
Decision, Filed September 12, 1962	109
Decree, Filed September 14, 1962	113
Claim of Appeal by Defendants and Proof of Service, Filed October 2, 1962	118
Plaintiff's Exhibit 1—Illinois Motion for Leave to File Petition for Declaratory Judgment	120
Plaintiff's Exhibit 2—Illinois Petition for Court's Instructions as to Representation of Brotherhood Members by attorneys	137
Plaintiff's Exhibit 4—FELA Settlements by Michigan Residents reported 1953-1955	155
Plaintiff's Exhibit 6—FELA Settlements by Michigan Residents reported 1955	157

Plaintiff's Exhibit 8—FELA Settlements by Michigan Residents reported 1956 159
Plaintiff's Exhibit 10—FELA Settlements by Michigan Residents reported 1957 161
Plaiitiff's Exhibit 12—FELA Settlements by Michigan Residents reported 1958 163
Plaintiff's Exhibit 14—FELA Settlements by Michigan Residents reported 1959 165
Plaintiff's Exhibit 16—FELA Settlements by Michigan Residents reported 1960 167
Plaintiff's Exhibit 17—FELA Settlements by Michigan Residents reported 1960 168
Plaintiff's Exhibit 19—Directory of the Grand Lodge and Subordinate Lodges of the Brotherhood of Railroad Trainmen January, 1959 169
Remittitur from Michigan Supreme Court, Filed Jan. 22, 1965 170
Motion for Further Proceedings, Filed Jan. 20, 1965 172
Opinion and Order of Circuit Court for the County of Jackson, Filed May 24, 1968 173
Judgment, Filed May 27, 1968 176
Claim of Appeal, Filed June 13, 1968 177
Transcript of Proceedings had on Feb. 5, 1965, Filed October 4, 1968 178
Transcript of Proceedings had on May 3, 1968 186
Majority Opinion with Appendix; and Minority Opinion by State of Michigan Supreme Court, March 9, 1970 205
Judgment by State of Michigan Supreme Court, March 9, 1970 220
Order denying Petition for Rehearing, May 4, 1970 .. 222

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 434

UNITED TRANSPORTATION UNION,

Petitioner,

vs.

THE STATE BAR OF MICHIGAN,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

[18]*

CIRCUIT COURT CALENDAR ENTRIES

1959

Jan. 28. Bill of complaint filed.

June 9. Answer to bill of complaint filed.

June 16. Plaintiff's reply to defendant's answer, filed.

Nov. 17. Interrogatories filed.

Nov. 25. Proof of service filed.

---

*Numbers in brackets at the outer edges refer to the pages of the certified record.

1960

Jan. 26. Answers of William Kennedy, president, Brotherhood of Railroad Trainmen, to plaintiff's interrogatories.

May 9. Order and notice of pre-trial conference filed.

May 27. Stipulation filed.

[19]

1961

Apr. 11. Plaintiffs statement of claim filed.

Apr. 11. Pre-trial summary by the court filed.

Apr. 12. Concise statement of defense filed.

Apr. 12. Order filed.

Apr. 14. Clerk's notice filed.

June 27. Exhibits filed (listed on summary sheet).

1962

Apr. 30. Motion to strike proceedings made in plaintiff's reply brief filed.

Apr. 30. Answer to motion to strike filed.

Sept. 12. Brief for plaintiff filed.

Sept. 12. Brief for defendants filed.

Sept. 12. Reply brief for plaintiff.

Sept. 12. Decision filed.

Sept. 14. Decree filed and entered.

Sept. 14. Clerk's notice filed.

Oct. 2. Appealed to Supreme Court, docket 2, page 138.

Oct. 5. Decree enrolled.

SUPREME COURT CALENDAR ENTRIES

1962

Oct. 2. Claim of appeal by defendants and proof of service filed.

Oct. 4. Notice of filing appeal and payment of appeal fee filed.

Dec. 28. Stipulation and Order extending time filed.

1963

Oct. 3. Certified to Supreme Court.

[20]

1965

Jan. 22. Remittitur from Supreme Court reversing Judgment and remanding to the Court below, filed.

CIRCUIT COURT CALENDAR ENTRIES

1965

Jan. 20. Motion for further proceedings in Circuit Court on remand from Supreme Court, notice of hearing and proof of service filed and entered, and order.

June 9. Motion to Dismiss certain defendants and affidavit filed.

1968

April 22. Motion for judgment and notice of hearing filed.

May 24. Motion for dismiss a certain defendant and affidavit filed.

May 24. Notice of calling up motion for decision with exhibits filed.

May 24. Notice of calling up motion for decision filed.
May 24. Opinion and order filed.
May 27. Judgment (Amending decree) filed and entered.
May 27. Clerk's notice filed.
June 17. Claim of appeal filed, A1-75.

COURT OF APPEALS DOCKET ENTRIES

1968

June 17. Claim of appeal, notice, proof of service filed.
June 17. Certificate of court reporter filed.
Sept. 16. Remittitur from Supreme Court granting application by defendants for leave to appeal prior to decision by the Court of Appeals is considered filed.
Oct. 4. Notice of filing transcript of record filed.
Oct. 4. Transcript of testimony filed.
Oct. 4. Affidavit filed.

[1]

SUPREME COURT CALENDAR ENTRIES

1968

July 11. Application filed (by pass).
Sept. 12. Application granted.

1969

Oct. 29. Circuit Court records filed.
Oct. 29. Notice for December filed.
Dec. 9. Argued and submitted.

1970

Mar. 9. Affirmed. No cost.
Mar. 27. Application for rehearing filed.
May 4. Ordered rehearing denied.
June 10. Record certified to Supreme Court of U.S.

[21]

IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE STATE BAR OF MICHIGAN,
vs.
THE BROTHERHOOD OF RAILROAD TRAINMEN,
No. T—640

BILL OF COMPLAINT

(Filed January 28, 1959)

The State Bar of Michigan respectfully represents unto this Honorable Court:

1. That it is a public body corporate, charged with the duty to aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in the State of Michigan.

2. That the Brotherhood of Railroad Trainmen is a national railway labor organization, with principal office in Cleveland, Ohio, but having branches, members, officers and agents throughout the United States, including the State of Michigan.

3. That Frank J. Carr and L. M. Hasbrouck, of Jackson, Raymond Fieberkorn and Thomas W. Fletcher, of Detroit, W. C. Coryell, of Okemos, L. E. Singer of Plymouth, E. V. Surdam of Grand Rapids, H. F. McCall of Birmingham, R. J. Johnson, and L. A. Russell, of Durand, A. V. Grandstaff, of Dearborn, W. T. Ellsworth,

of Allen Park, R. J. Snow, of Melvindale, and William E. B. Chase, of Livonia, are members, officers and agents of defendant Brotherhood of Railroad Trainmen residing within the State of Michigan, and that there are other members, officers and agents of said defendant Brotherhood of Railroad Trainmen, within the State of Michigan, constituting a class so numerous as to make it impracticable to bring them all before the court, as

[22]

to all of whom there are common questions of law and fact affecting their several rights and against all of whom a common relief is sought, as hereinafter shown.

4. That, in or about the year 1930, the Brotherhood of Railroad Trainmen organized and established a so-called "Legal Aid Department" as a division of said Brotherhood of Railroad Trainmen, representing, as reasons for organizing said Legal Aid Department, the following:

> Many lawyers frequently abuse the confidence of their clients by effecting low settlements in the case in order to obtain a higher settlement in some other case against the same railroad; incompetently preparing and processing such cases upon the law or the facts; not fully and fairly explaining to the client the terms of the employment, so that the client, after having assented to settlement, finds the proceeds thereof surcharged with items for expenses of litigation, medical expenses, expenses of one sort and another or the like, which are not legitimate, or if legitimate, were not explained to him before the settlement was concluded, as well as in other ways.
>
> Adequate compensation cannot in general be exacted if members of the Brotherhood are persuaded

by claim agents either to settle their own claims or to place them in the hands of incompetent, inexperienced or otherwise inadequate counsel.

In 1930, A. F. Whitney, then President of the Brotherhood, in a public utterance to the Brotherhood's membership, declared that in his several

[23]

years experience as an officer of the Brotherhood it had come to his attention that members who had been killed while engaged in railroad service had fared rather badly at the hands of railroad claim agents in some instances, as well as at the hands of so-called ambulance-chasing lawyers, and that settlements wholly inadequate in the light of the seriousness of the injuries and the responsibility of the employers had been made with members of the Brotherhood who were either entirely devoid of their rights in such matters or who had been induced to make cheap settlements by misrepresentations indulged in by those who sought to effectuate these settlements.

5. Plaintiff is informed and believes, and therefore alleges as true, that the Constitution and By-laws of the defendant Brotherhood of Railroad Trainmen require, and the so-called Legal Aid Department of said Brotherhood of Railroad Trainmen has, ever since its formation, by and through its members, officers and agents, pursued and continues to pursue and engage in a well-organized and systematized solicitation, for so-called Regional Counsel, of claims and/or causes of action for personal injuries and/or death of railroad employees arising under the Federal Employers Liability Act, using the methods and practices, as follows:

A member representative of the Brotherhood, usually the Chairman of the Grievance Committee in the locale of the accident, calls upon the injured employee or his bereaved family, and not only explains to them that they can, but recommends and urges

[24]

that they do consult with the Regional Counsel, and such representative urges said employees or survivors of the deceased employees not only to consult, but to retain Regional Counsel. Such employees or survivors of deceased employees are told that Regional Counsel will not charge in excess of 25 per cent (25%) of the amount of any recovery, whether recovery be affected by suit or settlement, and that this percentage will include expenses incidental to the investigation and any litigation of the claim.

6. Plaintiff is furtner informed and believes, and therefore alleges as true, that representatives of the Brotherhood of Railroad Trainmen are reimbursed for their time in bringing injured employees or the survivors of the deceased employees to the offices of the Regional Counsel. Reimbursement is at the member representative's hourly rate of pay on the railroad. Member representatives are also reimbursed for any out-of-pocket expenses incurred in bringing injured employees or the survivors of deceased employees to Regional Counsel.

7. Regional Counsel referred to above are the attorneys selected by the defendant Brotherhood of Railroad Trainmen, in some fifteen "regions" designated by said defendant to receive, through the methods and practices aforesaid, all Federal Employers Liability Act cases arising in their designated regions.

8. The Lower Peninsula of the State of Michigan, is the "region" of one Edward B. Henslee, an attorney, of Chicago, Illinois, and his associates, for whom de-

[25]

fendants, or some of them, actively solicit, by the methods herein outlined, all cases of personal injury or death of railroad employees occurring in the State of Michigan, as plaintiff is informed and believes and thereupon alleges as true.

9. Plaintiff further shows unto the Court, on information and belief, that, by and through the operations of the Legal Aid Department of the Brotherhood of Railroad Trainmen in the State of Michigan, large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen residing in Michigan and whose claims have arisen within the State of Michigan, have been unlawfuly and improperly solicited by said Brotherhood of Railroad Trainmen Legal Aid Department, through its members, agents and officers, and have been directed into and handled by the office of Regional Counsel Henslee and associates in Chicago, Illinois and elsewhere, to the extent that a majority of such cases are so solicited and so handled.

10. That such solicitation, on an organized and systematized basis, interferes with and impedes the orderly administration of justice, adversely affects the relationship between the legal profession in the State of Michigan and the public, and causes, and threatens to cause, irreparable damages to property rights of the public and the legal profession in the State of Michigan.

11. Plaintiff further alleges that the methods of operation of the Legal Aid Department of the Brother-

hood of Railroad Trainmen, as set forth above, violate the Penal Code of the State of Michigan, particularly Section 410 thereof, being Section 28.642 of Michigan Statutes Annotated, which provides in part as follows:

[26]

> "Any person, firm, co-partnership, association or organization of any kind, either incorporated or unincorporated, or any of the officers, agents, servants, employees, or members of any such person, firm, co-partnership association or organization of any kind, either incorporated or unincorporated, or of any division, bureau or committee of such association or organization, either incorporated or uncorporated, who shall directly or indirectly, individually, or by agent, servant, employee or member, solicit any person injured as the result of an accident, his administrator, executor, heirs or assigns, his guardian, or members of the family of the injured person, for the purpose of representing such person in making claim for damages or prosecuting any action or causes of action arising out of any personal injury claim against any other person, firm or corporation, or to employ counsel for the purpose of such solicitation, shall be guilty of a misdemeanor * * *".

12. The matter in dispute in this case exceeds the sum of One Hundred and No/100 ($100.00) Dollars.

Wherefore, the premises being considered and plaintiff being without adequate remedy at law, the plaintiff prays:

(a) That the named defendants be required to answer this bill of complaint, paragraph by paragraph, on their oaths.

(b) That, on the hearing of this cause, all named defendants, and all other defendants of this class, members,

[27]

agents and officers of the Brotherhood of Railroad Trainmen, be permanently enjoined from, directly or indirectly, engaging in the solicitation, in the State of Michigan, of claims and/or causes of action under the Federal Employers Liability Act, for the purpose of causing persons having such claims and/or representatives, to retain said Edward B. Henslee, and associates, or any other of the Regional Counsel of defendant Brotherhood of Railroad Trainmen, or any other attorney or attorneys, or firm of attorneys, in the prosecution and/or negotiation for settlement of such claims and/or causes of action.

(c) And that plaintiff may have such other and such further relief as equity and good conscience shall require, and as to this Honorable Court seems just.

/s/ State Bar of Michigan,
By Philip C. Kelly,

/s/ J. Cameron Hall,
General Counsel, State Bar of Michigan,

/s/ Philip C. Kelly,
301-4 Reynolds Building,
Jackson, Michigan,

/s/ J. Cameron Hall,
1323 Dime Building,
Detroit, Michigan,
Attorneys for Plaintiff.

[28]

(Jurats omitted in printing)

R. 29

ANSWER TO BILL OF COMPLAINT

(Filed June 9, 1959)

Now comes the defendants by Edward B. Henslee, Jr., Martin K. Henslee, John J. Naughton and Arthur Lumley, their attorneys, and for answer to the bill of complaint say:

1. Defendants admit the allegations of paragraph one and two of the bill of complaint.

2. Defendants admit that they are members, officers and agents of defendant Brotherhood of Railroad Trainmen (hereinafter called Trainmen) residing within the State of Michigan and further admit that there are others in like capacity within the State. Defendants deny all other allegations in paragraph 3.

3. Defendants admit that in the year 1930 the Trainmen organized and established a department of the Trainmen designated as the "Legal Aid Department." Defendants admit that the representations alleged were stated, along with other representations, as factors to be considered in deciding whether a legal aid department should be established. Defendants deny all other allegations of paragraph four of the bill of complaint.

Defendants aver that on a referendum questionnaire and ballot in 1930, the members of the lodges of the Trainmen in the United States voted by a majority vote of eleven to one that a legal aid department should be organized.

Defendants further aver that the said Legal Aid Department was thereupon organized as a part of or de-

[30]

partment of the defendant Trainmen and, as constituted, was directly subject to the provisions of the Constitution of the Trainmen and to the authority of the president of the Trainmen.

Defendants further aver that the title of the said Legal Aid Department was changed by order of the president of the Trainmen on or about January 1, 1959 and was redesignated as the "Department of Legal Counsel". Defendants aver that the title of the attorneys designated for the several regions was at the same time changed from "Regional Counsel" to their present designation as "Legal Counsel."

4. Defendants deny each and every allegation contained in paragraph five of the bill of complaint.

Defendants aver that in many cases, but not in all, a member of the defendant Trainmen calls upon, contacts, or in some other manner explains to an injured member employee, or his bereaved family, the advisability of obtaining a lawyer, or the opinion of a lawyer, and recommends that they consult with the Legal Counsel designated, and further recommends that the Legal Counsel be retained if a lawyer is to be retained. Defendants further aver that some of the said members have represented, as was the fact in most cases arising in the Lower Peninsula of the State of Michigan, that the legal counsel will not charge in excess of twenty-five percent (25%) of the amount of any recovery whether the recovery be affected by suit or settlement, and that this percentage would include expenses incidental to the investigation and any litigation of the claim.

Defendants further aver that this representation of the fee charged has been eliminated by order of the president of the Trainmen contained in his letter to all lodges dat-

[31]

ed March 16, 1959, effective April 1, 1959, hereinafter set out in the First Affirmative Defense to this answer.

5. Defendants admit the allegations of paragraph six of the bill of complaint as being in existence up to and including the 31st day of March, A. D. 1959.

Defendants further aver that the said compensation and reimbursement has been terminated under the previously mentioned order of the president of the Trainmen dated March 16, 1959.

6. Defendants deny each and every allegation of paragraph seven of the bill of complaint.

Legal Counsel referred to above are attorneys designated by the defendant Trainmen in some seventeen regions designated by the said defendant as attorneys recommended for their qualifications and their integrity to be competent to prosecute claims arising under the Federal Employer's Liability Act for members of the Trainmen in their designated regions.

7. Defendants deny all of the allegations of paragraph eight of the bill of complaint except that they admit the Edward B. Henslee referred to at one time was the Regional Counsel for a region including the Lower Peninsula of the State of Michigan and that he had associates. Defendants further aver that the said Edward B. Henslee died on November 22, 1958.

8. Defendants deny each and every allegation of paragraphs, nine, ten and eleven of the bill of complaint.

9. Answering paragraph twelve of the bill of complaint, defendants deny each and every allegation contained therein and specifically and particularly deny that

[32]

the plaintiff is entitled to any of the relief for which it prays.

First Affirmative Defense

For their First Affirmative Defense, defendants aver that defendant trainmen petitioned the Supreme Court of the State of Illinois for a declaratory judgment requesting that the Court rule that the conduct of trainmen and the operation of its Legal Aid Department, and the conduct of the attorneys who serve as its Regional Counsel was neither illegal nor unprofessional.

Hearings were held before the Honorable Charles H. Thompson, a former judge of the Supreme Court of Illinois as a special commissioner. Trainmen, the Illinois State and Chicago Bar Association, and a group of twenty-seven railroads appeared in the hearings by their counsel. Plaintiff herein, the State Bar of Michigan, filed charges with the Illinois State Bar Association and attempted to intervene in the declaratory judgment hearings. Evidence prepared by the plaintiff herein was presented at those hearings.

At the conclusion of the hearings, all parties filed briefs, and a brief was filed on behalf of the American Bar Association.

The opinion of the Supreme Court of Illinois as modified on denial of trainmen's petition for rehearing is reported at 13 Ill. 2d 391, 150 NE 2d 163. That Court decided that certain practices of the trainmen in its operation of the Legal Aid Department were objectionable and should be discontinued and the Court further indi-

cated what trainmen could do with respect to the injury and death claims of its members.

[33]

In compliance with the opinion of the Supreme Court of Illinois, the president of Trainmen in a letter to all lodges and members ordered the following:

"Cleveland, Ohio, March 16, 1959

To All Lodges and Members:

The following for your information and instruction:

LEGAL COUNSEL

The following letter addressed by me to All Legal Counsel of the Brotherhood is self-explanatory:

March 16, 1959.

To All Legal Counsel,
Brotherhood of Railroad Trainmen.
Dear Sirs and Brothers:

Some time ago, I sent you a copy of the opinion of the Supreme Court of Illinois in a case in which the Brotherhood of Railroad Trainmen asked the Court of Illinois for a ruling as to what the Legal Aid Department of the Brotherhood can do for its injured members and the conduct that should be followed by Legal Counsel of the Brotherhood.

Under date of March 20, 1958, the Supreme Court of Illinois handed down its opinion which is found in volume 13, 2nd Edition of the Illinois Supreme Court reports on page 391.

In compliance with said opinion, any Legal Counsel who represents the Brotherhood is hereby instructed, and required, to live up to said opinion

[34]

in its entirety, and any violation shall be cause to remove said attorney, and the same shall be reported to the Bar Association of the particular state in which such violation may occur.

The Brotherhood will finance its Legal Aid Department, and will investigate accidents so that it will be acquainted with the cause of said accidents, and by so doing will be able to remedy any violation of the Federal Employers' Liability Act and The Safety Appliance Act. The result of such investigation shall be made available only to the injured person.

Please arrange to comply with these instructions on and after April 1, 1959, and acknowledge receipt of this letter by return mail.

Fraternally yours,
/signed/ W.P. Kennedy, President."

Wherefore these defendants pray that the bill of complaint be dismissed for the reason that the issues raised by the bill of complaint are moot and the said bill is deficient for want of equity.

SECOND AFFIRMATIVE DEFENSE

For their Second Affirmative Defense, defendants aver that plaintiff herein in attempting to base its bill of complaint on an alleged violation of the statutes of the State of Michigan is attempting to enjoin the alleged commission of a crime and is patently attempting to deprive these defendants of their constitutional right to a trial by jury.

[35]

Wherefore, these defendants pray that paragraph eleven of the bill of complaint be stricken and that any prayer for relief based thereon be dismissed for the reason that the said bill in that regard is deficient for want of equity.

THIRD AFFIRMATIVE DEFENSE

For their Third Affirmative Defense, defendants aver that their activities, past or present, do not infringe any statute, rule or law of the State of Michigan, do not interfere or impede the orderly administration of justice in the State of Michigan, and do not infringe the legal or property rights of any individual or group. Defendants further aver that if any of their actions could be considered an offense against any of the said laws or interest, the right of the Trainmen, and the consequent right of the remaining defendants as members, officers and agents of defendant Trainmen to advise injured trainmen or their bereaved families in claims arising under the Federal Employers' Liability Act derives directly from the Railway Labor Act (U.S.C.A., Title 45, Sections 151-164) and, to the extent that any statute or rule of Michigan Law might be deemed to interdict or prohibit the conduct and actions of the defendants, such statute or rule of Michigan law is, or would be, in conflict with the Railway Labor Act, the Interstate Commerce Clause of the Constitution of the United States (Article 1, Section 8) and the Supremacy Clause of the Constitution (Article VI, Clause 2).

Wherefore, these defendants, having answered the bill of complaint, pray that in this respect and, in the foregoing respects, the bill of complaint should be dismissed

[36]

for want of equity and that these defendants should be awarded their costs.

Brotherhood of Railroad Trainmen,
By W. E. B. Chase, Vice President
Frank J. Carr
L. M. Hasbrouck
Raymond Fieberkorn
Thomas W. Fletcher
W. C. Coryell
L. E. Singer
E. V. Surdam
H. F. McCall
R. J. Johnson
L. A. Russel
William E. B. Chase, Individually
A. V. Grandstaff
W. T. Ellsworth
R. J. Snow
Defendants

Edward B. Henslee, Jr.,
Martin K. Henslee, and
John J. Naughton
139 N. Clark Street,
Chicago 2, Illinois
and
Arthur Lumley
1512 Dime Building,
Detroit, Michigan,
Attorneys for Defendants.

[37-39] (Jurats omitted in printing)

[40]

PLAINTIFF'S REPLY TO DEFENDANTS' ANSWER

(Filed June 16, 1959)

Now comes the State Bar of Michigan, plaintiff herein, by way of reply to the answer of the defendants herein and shows unto the Court as follows:

1. Replying to the affirmative allegations contained in the second, third and fourth paragraphs of paragraph 3 of the answer herein, this plaintiff is without information sufficient to form a belief with respect thereto and hence, neither admits nor denies the same but leaves the defendants to their proofs thereof.

2. Replying to paragraph 4 thereof, the plaintiff shows that the defendants and each of them are precluded from denying the contents of the sub-paragraph under paragraph 5 of the bill of complaint, by reason of the admissions on behalf of the defendant Brotherhood and the findings of fact in a proceeding in the Supreme Court of the State of Illinois, to which proceeding and opinion reference is made at the top of page 6 in the defendant's answer, with reference to the matter of an investigation as to the practices of the Brotherhood of Railroad Trainmen, etc., 13 Illinois 2nd, 391. 150 Northeastern 2nd, 163.

Replying to the second paragraph under paragraph 4 of the defendants' answer, the plaintiff shows that the admissions by the defendants therein set forth constitute solicitation of claims within the Sate of Michigan by the defendants or by part or all of the defendants and by the defendant Brotherhood, on behalf of the Regional Counsel or Legal Counsel of the defendant Brotherhood.

[41]

Replying to the third paragraph under paragraph 4 of the defendants' answer, the plaintiff shows that:

(a) The alleged order by the President of the defendant Brotherhood dated March 16, 1959 is alleged by the defendants in this paragraph to apply to the representation as to the fee to be charged by the Brotherhood's Regional Counsel or Legal Counsel and does not cover the many other courses of conduct which are the subject of this cause.

(b) There is no assurance that each and all of the members of the defendant Brotherhood will comply with the terms of such orders as may be issued by the President of the defendant Brotherhood.

(c) There is no assurance that if there were an order by the President of the defendant Brotherhood as alleged, the same might not be reversed by either this or a future officer of the defendant Brotherhood.

3. Replying to the affirmative matters set forth in paragraph 5 of the answer, wherein the defendants admit the allegations of paragraph 6 of the Bill of Complaint up to March 31, 1959, the plaintiff shows that even if the President of the defendant Brotherhood disseminated a communication dated March 16, 1959, the same does not constitute a defense in this cause for the reasons that:

(a) Said purported communication by the President of the defendant Brotherhood does not cover all of the matters concerned in this cause, nor is it alleged to cover all the matters of conduct concerned in this cause.

[42]

(b) There is no assurance that each and all of the members of the defendant Brotherhood will comply with the terms of such orders as may be issued by the President of the defendant Brotherhood.

(c) There is no assurance that if there were an order by the President of the defendant Brotherhood as alleged, the same might not be reversed by either this or a future officer of the defendant Brotherhood.

4. Replying to the purported denials and affirmative allegations in paragraph 6 of the defendants' answer, the plaintiff shows that the second paragraph under paragraph 6 in effect admits the type of conduct alleged in paragraph 7 of the plaintiff's bill of complaint. The plaintiff further shows that the defendants are precluded from denying the conduct described in paragraph 7 of the plaintiffs' bill of complaint by reason of the admissions of the defendant Brotherhood and opinion of the Court in said Illinois case to which reference is made at the top of page 6 of the defendants' answer.

5. Replying to paragraph 7 thereof, with reference to the denial therein contained, the defendants are precluded from denying the allegations of paragraph 8 of the plaintiff's bill of complaint by reason of the admissions on the part of the defendant Brotherhood and the findings of the Court in said Illinois case as described at the top of page 6 of the defendants' answer. Further answering said paragraph, the plaintiff lacks information sufficient to form a belief with respect to the allegation that Edward B. Henslee died either on November 22, 1958 or any other date and accordingly, neither admits nor denies the same but leaves the defendants to their proofs thereof. The plaintiff further shows that the conduct with

[43]

reference to solicitation and other matters described in the bill of complaint are applicable to whatever Regional Counsel or Legal Counsel may have been in office or associated with the defendant Brotherhood as described in the bill of complaint and that the allegations of the bill of complaint with reference to said Edward B. Henslee refer to whoever acted as Regional Counsel or Legal Counsel for the defendant Brotherhood with reference to said matters described in the bill of complaint.

6. Replying to paragraph 8 of the defendants's answer, the plaintiff shows that the defendants are precluded from the denials as to paragraph 9, 10 and 11 of the bill of complaint by reason of admissions made by the defendant Brotherhood in said case in the Illinois Supreme Court as cited at the top of page 6 of the defendants' answer and also for the Court findings in that case. The plaintiff further shows that the defendants have failed to set forth any reason or reasons as to the denial of the existence of the statute as quoted in paragraph 11 of the bill of complaint.

7. Replying to any further affirmative allegations contained in said answer to which reference has not specifically been made, the plaintiff denies the same.

Reply to First Affirmative Defense

Replying to the first affirmative defense, the plaintiff admits that the general subject matter here concerned was before the Supreme Court of the State of Illinois, along with various other matters relative to other areas, in the matter of an investigation as to the practices of the Brotherhood of Railroad Trainmen, etc.

The plaintiff denies the first paragraph under "first affirmative defense" and shows that said paragraph is not

[44]

a correct representation to this Court with reference to the contents of the opinion in said Illinois case. The plaintiff further shows that in the opinion of of the Supreme Court of Illinois, with reference to the Brotherhood and its Regional Counsel, the Illinois Court recited that: "* * * its present practices and those of its regional counsel cannot be continued * * *"; the plaintiff further shows that the Illinois Court thereupon prescribed certain conditions and limitations on the conduct of the defendant Brotherhood.

The plaintiff further shows that the conduct of the defendant Brotherhood and its agents has been before the Courts of several states with reference to the same or similar practices as those at issue in this cause and that the conduct described has been held to be reprehensible.

The only other or further affirmative matters set forth in said purported first affirmative defense is reference to an alleged communication by the President of the defendant Brotherhood under date of March 16, 1959, appearing to instruct the membership to comply with the decree of the Supreme Court of the State of Illinois. However, the same is not a defense in this cause for the following reasons:

(a) Said communication does not direct compliance with all the matters at issue in this cause.

(b) There is no assurance that the membership of the defendant Brotherhood or the other defendants or any of them will in all respects comply with the terms of said alleged complication by the Presi-

dent of the defendant Brotherhood, either concurrently or at all times in the future.

(c) There is no assurance that the communication by the President of the defendant Brotherhood,

[45]

as alleged, would not be reversed by this or a future officer of the defendant Brotherhood.

Further replying, the plaintiff shows that the conduct at issue in this cause, and even that conduct admitted in the defendants' answer, violates the statute in force in the State of Michigan as described in the bill of complaint and violates those principles effective within the State of Michigan with reference to the freedom of a claimant to select an attorney of his own choosing, without influence by organizations or persons in the capacity of the defendants in this cause, either by way of recommendation, urging the employment of particular counsel, conduct designed to secure cases for particular counsel, and otherwise.

The plaintiff shows therefore that the matters in this cause are not moot and that said purported first affirmative defense is not applicable.

Reply to Second Affirmative Defense

Replying to the purported second affirmative defense, the plaintiff denies that in the State of Michigan an injunction against a course of conduct which constitutes the commission of a crime is unlawful or constitutes a reason for non-issuance of such injunction.

The plaintiff further shows that this cause will assist in preventing multiplicity of proceedings within the State of Michigan as to each of the various occurrences of the

conduct concerning which complaint is made in this cause.

The plaintiff further shows that the conduct concerned herein violates both the statute to which reference is

[46]

made in the plaintiff's bill of complaint and also those principles in force in the State of Michigan to which reference is made under the reply to the first affirmative defense as above set forth.

The plaintiff therefore shows that paragraph 11 of the bill of complaint should not be stricken, as prayed by the defendants, and further, that said purported second affirmative defense does not constitute a defense herein.

Reply to Third Affirmative Defense

Replying to the first sentence of the purported third affirmative defense, the plaintiff denies the averments therein contained and shows that the conduct concerned herein does violate the statute to which reference is made in the bill of complaint, violates those principles described in the reply to the first affirmative defense above, violates the laws of the State of Michigan, interferes and impedes with the orderly administration of justice in the State of Michigan and does infringe upon the rights both of the claimants concerned in the cases to which reference is made in these proceedings and also the rights of the plaintiff and the Courts of the State of Michigan.

Replying to the second sentence of the third affirmative defense, the plaintiff denies the conclusions therein contained.

Further answering said second sentence of the purported third affirmative defense, the plaintiff shows that the reference therein made to the Federal Employers'

Liability Act as derived from the Railway Labor Act, cited by the defendants as United States Code Annotated, Title 45, Sections 151 through 164, is an erroneous citation to this Court. The plaintiff shows that said Sections 151

[47]

through 164 as cited by the defendants, deal with "rates of pay, rules and working conditions" as repeatedly described in those sections of said Federal Statute.

The plaintiff further shows that the defendants were and are well aware that the citation of those sections to this Court are not a defense of the conduct at issue in this cause for in said opinion of the Illinois Supreme Court as cited in the defendants' answer, the Illinois Court set forth that:

> "The Brotherhood defends its practices on legal grounds, and also argues that they are justified by policy considerations. As a matter of law it argues that its method of handling the personal injury and death claims of its members is permissible because under the Railway Labor Act the Brotherhood is authorized to represent its members, before the National Railroad Adjustment Board or other appropriate tribunals, in the processing of 'disputes growing out of grievances.' (45 U.S.C. 152). But these injury and death claims are not the kind of labor disputes that the statute contemplates. We find nothing to suggest that Congress intended by the Railway Labor Act, any more than by the Labor Management Relations Act, (29 U.S.C. 141) to overthrow State regulation of the legal profession and the unauthorized practice of the law."

Further replying, the plaintiff denies that the statute and principles and rules of law within the State of Michigan applicable to the conduct concerned herein, in any way conflicts with the Railway Labor Act or Federal Statute, with the Interstate Commerce Clause of the Con-

[48]

stitution of the United States with Article I, Section 8 thereof, the Supremacy Clause of the Constitution, with Article VI, Clause 2, or otherwise conflict with Federal Statutes or the Constitution of the United States.

The plaintiff shows that said purported third affirmative defense is not available as a defense in this cause.

Wherefore, the plaintiff denying any other or further affirmative matters contained in said answer and affirmative defenses, the plaintiff prays that the plaintiff be granted that relief described in the plaintiff's bill of complaint.

State Bar of Michigan
By Phillip C. Kelley and
By J. Cameron Hall
General Counsel
State Bar of Michigan

Phillip C. Kelly,
301-4 Reynolds Building,
Jackson, Michigan;

J. Cameron Hall,
1323 Dime Building,
Detroit 26, Michigan,
Attorneys for Plaintiff.

[48, 49] (Jurats omitted in printing)

* * * * *

[62]

PLAINTIFF'S STATEMENT OF CLAIM

(Filed April 11, 1961)

Plaintiff claims that defendant, the Brotherhood of Railroad Trainmen, and its members, officers and agents named herein, and as a class within the State of Michigan ever since 1930, have been engaged in a course of conduct which consists of organized solicitation of claims for injuries and/or death of railroad employees occurring in the course of their employment within the State of Michigan, such solicitation being for the benefit of out-of-state lawyers, particularly defendants Henslee and Naughton, named herein.

Plaintiff further claims that, as part of such organized solicitation, the solicitors are paid for their time and services, the Brotherhood of Railroad Trainmen is paid on an agreed basis, in consideration of designating said

[63]

attorneys as the recipients of such solicited claims, and the injured employees and/or their survivors are provided with financial support while their cases are pending.

Plaintiff claims that the conduct of defendants as set forth in the bill of complaint is in violation of the criminal statutes of the State of Michigan, and the canons of ethics, as adopted by the Supreme Court of Michigan, that such conduct further interferes with, and impedes the orderly administration of justice, adversely affects the relationship between the legal profession and the public in the State of Michigan, and causes irreparable damage to property rights of the public, and the legal

profession, in the State of Michigan, and should be enjoined.

Phillip C. Kelly,
J. Cameron Hall,
Attorneys for Plaintiff.

Dated: May 27, 1960.

PRE-TRIAL SUMMARY BY THE COURT

(Filed April 11, 1961)

The parties hereto, by their respective counsel, appeared for pre-trial conference before this Court on May 27, 1960.

The pre-trial statement of claim of plaintiff was filed at that time, and subsequent thereto defendants' pre-trial statement of claim was also filed.

It appears that there is a possibility that a consent decree may enter in this cause against the defendant. The [64]

Brotherhood of Railroad Trainmen and all named defendants. (In this connection it is pointed out that Attorneys Edward B. Henslee, Jr., Martin K. Henslee, and John J. Naughton have declined to submit voluntarily to the jurisdiction of this court, they being nonresidents.)

In the event there is not a consent decree, defendants have been requested to advise what issue in Michigan is different than in the other states where consent decrees have entered.

It was also agreed that depositions of Mr. Whitney, with his files, and Mr. Maher and the three above-named attorneys may be taken; Mr. Whitney and Mr. Maher in Cleveland and the three attorneys either in Chicago or Detroit.

It was further agreed that the answer heretofore filed may stand as the answer to the plaintiff's amended declaration. (In this connection it is also pointed out that this Court is this date entering an order striking from the files and records of this case the appearances of the three above-named defendants and also striking the amended bill of complaint filed herein and reinstating the original bill of complaint of plaintiffs filed herein, so that the original answer may now stand as the answer to the original bill of complaint.)

It was further agreed that the Constitution of The Brotherhood of Railroad Trainmen as amended at the convention in 1954 may be admitted in evidence, including any amendments thereto, copies of which will be furnished by the defendants.

At the time of pre-trial it was also agreed that this cause should remain on the pre-trial docket and stand continued from day to day until June 10, 1959, prior to which time this Court was to be advised as to whether [65]

or not there would be a consent decree. This Court not having been advised that there would be a consent decree, this matter is hereby ordered transferred from the pre-trial to the trial docket.

(Signed) John C. Dalton
John C. Dalton, Circuit Judge.

Dated: April 11, 1961.

CONCISE STATEMENT OF DEFENSE
(Filed April 12, 1961)

Trainmen contend that the State Bar is attempting to enjoin BRT in Michigan on the basis of a bill of com-

plaint which alleges selected statements from the opinion of the Supreme Court of Illinois, Re. Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 150 NE 2d 163, as facts, though based solely on information and belief. Such a complaint is not proper. Hartingh v. Bay Circuit Judge, 176 Mich. 289, 142 N.W. 585, Ann. Cases 1915 B, 520. The matter is moot since the Trainmen are, and have been, in full compliance with the decision of the Supreme Court of Illinois. The State Bar of Michigan attempted to intervene in the said proceeding and evidence prepared by the State Bar was introduced in the said proceeding. The complaint is also deficient for want of equity in that neither the State Bar, nor the public of the State of Michigan have any property right in Federal Employers' Liability Act claims or cases arising out of railroad accidents occurring in Michigan. The right to practice law is not a property right. Ayres v. Hadaway, 303 Mich. 589, 6 N.W. 2d 905. Even if the public had property rights in these cases, the State Bar of Michigan [66]

is not the proper party to enforce those rights.

Plaintiff may not base its complaint on an alleged violation of the Michigan statutes because it is hereby attempting to enjoin the alleged commission of a crime and is patently attempting to deprive the defendants of their Constitutional right to a trial by jury. Even if a complaint could be validly based on the said statute, the allegations herein do not state a cause of action founded on that statute. The meaning and effect of that statute was considered and stated in Hightower v. Detroit Edison Co., 282 Mich. 1, 247 N.W. 97. There, the Supreme Court of Michigan states:

> "The rule of strict construction confines an offense to the words of the statute, but it permits the

words not only to be read naturally, but to be given a meaning in harmony with the purpose and intent of the law as far as may be done without distortion of language. Deloria v. Atkins, 158 Mich. 232, 241, 122 N.W. 559; People v. Gould, 237 Mich. 156, 163, 211 N.W. 346; Sutherland on Statutory Construction, Vol. 2 s 528 et seq.; 59 C. J. 1113 §660.

The purpose of the act is to discourage the practice commonly known as 'ambulance chasing'. The practice has developed recognized evils, the major of which are (1) fomenting litigation with resultant burdens on the courts and public purpose; (2) subornation of perjury; (3) mulcting of innocent persons by judgments, upon manufactured causes of action and perjured testimony, and by settlements to buy peace; and (4) defrauding of injured persons having proper causes of action, but ignorant of legal rights and court procedure, by means of contracts

[67]

which retain exorbitant percentages of recovery and illegal charges for court costs and expenses and by settlements made for quick return of fees and against the just rights of the injured persons."

Finally, Trainmen contend that their rights in the premises are governed by Federal Statutes, the Federal Constitution, and considerations of public policy. Because of the said rights, Trainmen are entitled to have this action dismissed.

Respectfully submitted,

Arthur C. Lumley,
Attorney for Certain
Defendants,
1512 Dime Building,
Detroit, Michigan.

TRANSCRIPT OF TESTIMONY

Jackson, Michigan, June 27, 1961
10:13 o'clock a. m.

Before Honorable John C. Dalton, Circuit Judge.

*(2) Appearances: Phillip C. Kelly, Esq., 301-4 Reynolds Building, Jackson, Michigan, and J. Cameron Hall, Esq., General Counsel, State Bar of Michigan, 1323 Dime Building, Detroit 26, Michigan, for the plaintiff; Arthur C. Lumley, Esq., 1512 Dime Building, Detroit 26, Michigan, and Henslee & Henslee, Esqs., of counsel by Edward Henslee, Jr., Esq., and John J. Naughton, Esq., 139 North Clark Street, Chicago 2, Illinois, for the defendants.

[68]

(3) The Court: Gentlemen, are you ready for this matter to be presented to the Court?

Mr. Kelly: The plaintiff is ready, your Honor.

The Court: Defense?

Mr. Lumley: Defense is ready.

The Court: Mr. Kelly?

Mr. Kelly: May I inquire if John J. Naughton is one of the partners of Henslee, Henslee & Naughton, who appears as counsel for the defendants here?

Mr. Naughton: Mr. Naughton is not a partner but he appears for the defendants. He is associated with the firm of Henslee & Henslee.

Mr. Kelly: In Chicago.

Mr. Naughton: In Chicago.

Mr. Kelly: May I inquire if anyone else from that firm or associated with that firm is here?

---

*(2) refers to page of Transcript of Testimony.

Mr. Henslee, Jr.; I am Edward Henslee, Jr. I am here.

The Court: Are they of counsel in this matter?

Mr. Lumley: The order hasn't been entered, your Honor.

Your Honor has the opinion. I do not have a copy (4) of that order.

Mr. Kelly: May I refer to the answer to the bill of complaint filed by the defendants, in which Edward B. Henslee, Jr., Martin K. Henslee, and John J. Naughton, 139 North Clark Street, Chicago 2, Illinois, State 2-5925, and Arthur C. Lumley, 1512 Dime Building, Detroit 26, Michigan, Attorney for Defendants, Woodward 2-1490, appears as part of the record and files in this case?

Mr. Lumley: There is no contest about that, your Honor.

At one time I believe there was an order entered striking these parties.

The Court: That is right.

[69]

Mr. Lumley: And then your Honor rendered an opinion in which you said that for comity they could be allowed to proceed as defendants, but we didn't enter an order on that.

So that I took the position, in view of the fact we didn't enter an order, that I could have them here to assist me in the trial of the matter, just like you would have another agent to assist you.

It doesn't make any difference to me. If the Court wishes to admit them right now as attorneys in this case, I would not have any objection.

Mr. Kelly: I think the—

Mr. Lumley: That was the reason I made that state- (5) ment.

Mr. Kelly: I think at no time were they refused the privilege as appearing as counsel here, and as I understand the record they are here as counsel for the defendant.

The Court: We are splitting hairs here.

Is there any objection to the record showing that they are here as of counsel?

Mr. Lumley: No.

The Court: Let the record so show.

Mr. Kelly: May it please your Honor, this cause is here this morning on the original bill of complaint and the answer of the defendants to the bill of complaint and the reply of the plaintiff to the defendants' answer.

In these pleadings the issues are to a considerable extent admitted. The allegations of the bill of complaint are admitted, to be more accurate.

And it is proposed on behalf of the plaintiff at the outset of this case to make an opening statement on the record delineating what issues are admitted in the pleadings. And in the course of this statement, to present documentary exhibits on the record so that the Court [70]

may have before it, insofar as it can be done, the facts which we ask the Court to find on the pleadings, following which we will present evidence as to the facts which are in dispute.

And for the benefit of the Court, this being a (6) chancery case, on behalf of the State Bar of Michigan, I think it is proper to summarize briefly the background

and history of this litigation and of this matter of the State Bar to this date, including the pleadings and issues here before the Court this morning.

Now, the matter which we are pursuing is, namely, the alleged unlawful solicitation through The Brotherhood of Railroad Trainmen, Legal Aid Department, of cases of Michigan residents, railroad employees and their survivors in the event of the death of those employees, which cases come under the terms and provisions of the Federal Employers' Liability Act; the solicitation of those cases through the operations of the Legal Aid Department of The Brotherhood of Railroad Trainmen who have certain attorneys—more specifically, have regional counsel of The Brotherhood of Railroad Trainmen, Legal Aid Department—whose territory includes the railroads in the lower peninsula of Michigan.

Now, this matter first came to light, at least to the knowledge of the State Bar of Michigan and myself as a member of that bar, in the form of a newspaper story which appeared in the local Jackson Citizen Patriot late in 1952, which contained—

Mr. Lumley: Just a moment. I object to any reference to something that would categorically be hearsay.

He could so mention the newspaper story.

(7) The Court: There is no objection to noticing it.

This Court will not take judicial notice of any newspaper story. It will not receive it in evidence, because it is hearsay.

[71]

You have no objection to the record showing that is how it first came to your attention?

Mr. Kelly: All right.

It came to the attention of the City of Jackson and the attorneys practicing in Jackson, members of the Jackson County Bar Association, late in 1952, that the case of a local citizen employed by the New York Central Railroad had been handled by—

Mr. Lumley: Just a moment. I object to that again because now he is telling what is in the article, and that, I believe, is hearsay, your Honor.

Mr. Kelly: This is prefatory, your Honor please, to giving the Court the background of this case. There is no jury here. I do not ask the Court to consider it as any evidence in the case.

The Court: Let's keep in mind, gentlemen, we do not have any jury to impress here.

Let's get the facts before the Court so we can have this matter for disposition.

As a matter of fact, the Court is familiar with it, anyway, but I do not think it is properly before the Court.

(8) Mr. Kelly: I am going to elaborate on it.

The Court: Lets' go on. We have this coming to the attention of the State Bar in 1952 through a newspaper story which appeared in the Jackson Citizen Patroit.

Mr. Kelly: I may say to the Court that it had been the cause of some wonder why this type of case was never seen in this Court, and I think the records will show that no such case as an F. E. L. A. case has ever been in this court.

As a result of this newspaper publicity, the State Bar of Michigan appointed a committee to investigate what was going on in reference to the F. E. L. A. cases arising in Michigan.

[72]

I was appointed chairman of the State Bar committee by President David Pence.

An investigation by our committee disclosed that there had been established by the B. of R. T. back in 1930, approximately, what was called a Legal Aid Department. The rational or the explanation for the creation of this department was expounded by the president of the B. of R. T. at that time. I will refer to that later as to the statements which were made as to why this Legal Aid Department was organized.

I think probably in deference and in reference to the Court's indicated statement that I will proceed without any further background to the state of the pleadings in this (9) case.

The Court: Very well.

Mr. Kelly: Referring only just briefly to those further matters.

The State Bar, after the disclosures made from the investigation our committee had produced, authorized a complaint to be made on behalf of the State Bar of Michigan to the Chicago Bar Association against the Henslee firm in Chicago, regional counsel of the B. of R. T. covering Michigan. That complaint was filed with the Chicago Bar Association in the year 1956 or 1957. I believe '56. And it was made at that time by a proceeding instituted by The Brotherhood of Railroad Trainmen in the Supreme Court of the State of Illinois, asking for approval of their methods of what we term solicitation in these F. E. L. A. cases.

The Supreme Court of Illinois appointed a commissioner to hold hearings and investigate the operations

and, following the report of the commissioner, the Supreme Court entered a decree disapproving their methods and operations and entering a decree to that effect, [73]

but at the same time stating that, inasmuch as the law had just been settled in Illinois, the complaints which were pending by the State Bar of Michigan and, I think, the Philadelphia Bar Association at that time against regional counsel in Chicago should be dismissed and not prosecuted.

(10) So that this proceeding was authorized by the State Bar, the instant proceeding here, to ask the Court for an injunction against the operations of The Brotherhood of Railroad Trainmen in Michigan. And that is the basis on which this case has come to court.

Now, in our bill of complaint, in paragraph 1, it is alleged that the State Bar of Michigan is a public body corporate, charged with the duty to aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in the State of Michigan.

The answer of the defendants admits paragraph 1.

And in paragraph 2 it is alleged that The Brotherhood of Railroad Trainmen is a national railway labor organization, with principal office in Cleveland, Ohio, but having branches, members, officers and agents throughout the United States, including the State of Michigan.

And the answer admits those allegations.

Paragraph 3 alleges: "That Frank J. Carr and L. M. Hasbrouck, of Jackson, Raymond Fieberkorn and

Thomas W. Fletcher, of Detroit, W. C. Coryell, of Okemos, L. E. Singer of Plymouth, E. V. Surdam, of Grand Rapids, H. F. McCall, of Birmingham, R. J. Johnson and L. A. Russell, of Durand, A. V. Grandstaff, of Dearborn, W. T. Ellsworth, of Allen Park, (11) R. J. Snow, of Melvindale, and William E. B. Chase, of Livonia, are

[74]

members, officers and agents of defendant Brotherhood of Railroad Trainmen residing within the State of Michigan, and that there are other members, officers and agents of said defendant Brotherhood of Railroad Trainmen, within the State of Michigan, constituting a class so numerous as to make it impracticable to bring them all before the court, as to all of whom there are common questions of law and fact affecting their several rights and against all of whom a common relief is sought, as hereinafter shown."

The answer of the defendants admits that they are members, officers and agents of defendant Brotherhood of Railroad Trainmen (hereinafter called Trainmen) residing within the State of Michigan and further admit that there are others in like capacity within the state. Defendants deny all other allegations in paragraph 3.

In other words, the denial of the defendants there is the statement of the allegation that it constitutes a class so numerous as to make it impracticable to bring them all before the court. There are no questions of law and fact as to all of them.

In paragraph 4 of the bill of complaint it is alleged that in or about the year 1930 the Brotherhood of Railroad Trainmen organized and established a so-called Legal Aid Department as a division of said Brother-

hood of Railroad Trainmen, (12) representing, as reasons for organizing said Legal Aid Department, the following:

"Many lawyers frequently abuse the confidence of their clients by effecting low settlements in the case in order to obtain a higher settlement in some other case against the same railroad; incompetently preparing and processing such cases upon the law or the facts; not fully and fairly explaining to the [75]

client the terms of the employment, so that the client, after having assented to settlement, finds the proceeds thereof surcharged with items for expense of litigation, medical expenses, expenses of one sort and another or the like, which are not legitimate, or if legitimate, were not explained to him before the settlement was concluded, as well as in other ways.

"Adequate compensation cannot in general be exacted if members of the Brotherhood are persuaded by claim agents either to settle their own claims or to place them in the hands of incompetent, inexperienced or otherwise inadequate counsel.

"In 1930, A. F. Whitney, then President of the Brotherhood, in a public utterance to the Brotherhood's membership, declared that in his several years' experience as an officer of the Brotherhood, it had come to his attention that members who had been killed while engaged in railroad service had fared rather badly at the hands of railroad claim (13) agents in some instances, as well as at the hands of so-called ambulance-chasing lawyers, and that settlements wholly inadequate in the light of the seriousness of the injuries and the responsibility

of the employers had been made with members of the Brotherhood who were either entirely devoid of their rights in such matters or who had been induced to make cheap settlements by misrepresentations indulged in by those who sought to effectuate these settlements."

The answer of the defendants admits "that in the year 1930 the Trainmen organized and established a department of the Trainmen designated as the 'Legal Aid Department.' Defendants admit that the representations

[76]

alleged were stated, along with other representations, as factors to be considered in deciding whether a legal aid department should be established. Defendants deny all other allegations of paragraph four of the bill of complaint."

I point out to your Honor at this time that there are no other allegations in the complaint which would be covered by that denial. In other words, paragraph 4 is in effect admitted.

Paragraph 4, that is correct, is in effect admitted.

And then the defendants go on to say further in their answer, which is numbered 3 in the answer:

"Defendants aver that on a referendum questionnaire and ballot in 1930, the members of the lodges of the Trainmen (14) in the United States voted by a majority of eleven to one that a legal aid department should be organized.

"Defendants further aver that the said Legal Aid Department was thereupon organized as a part of or department of the defendant Trainmen and, as

constituted, was directly subject to the provisions of the Constitution of the Trainmen and to the authority of the president of the Trainmen.

"Defendants further aver that the title of the said Legal Aid Department was changed by order of the president of the Trainmen on or about January 1, 1959, and was redesignated as the 'Department of Legal Counsel.' Defendants aver that the title of the attorneys designated for the several regions was at the same time changed from 'Regional Counsel' to their present designation as 'Legal Counsel.'"

[77]

Now, the plaintiff has filed a reply to these affirmative allegations, as follows:

"Replying to the affirmative allegations contained in the second, third and fourth paragraphs of paragraph 3 of the answer herein, this plaintiff is without information sufficient to form a belief with respect thereto and hence, neither admits nor denies the same but leaves the defendants to their proofs thereof."

In paragraph 5 of the bill of complaint it is alleged "that plaintiff is informed and believes, and therefore alleges as true, that the Constitution and By-Laws of the defendant (15) Brotherhood of Railroad Trainmen require, and the so-called Legal Aid Department of said Brotherhood of Railroad Trainmen has, ever since its formation, by and through its members, officers and agents, pursued and continues to pursue and engage in a well-organized and systematized solicitation, for so-called Regional Counsel, of claims and/or causes of action for personal injuries and/or death of railroad

employees arising under the Federal Employer's Liability Act, using the methods and practices, as follows:

> "A member representative of the Brotherhood, usually the Chairman of the Grievance Committee in the locale of the accident, calls upon the injured employee or his bereaved family, and not only explains to them that they can, but recommends and urges that they do consult with the Regional Counsel, and such representative urges said employees or survivors of the deceased employees not only to consult, but to retain Regional Counsel. Such employees or survivors of deceased employees are told that Regional Counsel will not charge in excess of

[78]

> 25 per cent (25%) of the amount of any recovery, whether recovery be affected by suit or settlement, and that this percentage will include expenses incidental to the investigation and any litigation of the claim."

And in answer to that paragraph, the answer of the defendants is as follows:

> "Defendants deny each and every allegation contained (16) in paragraph five of the bill of complaint.
>
> "Defendants aver that in many cases, but not in all, a member of the defendant Trainmen calls upon, contacts, or in some other manner explains to an injured member employee, or his bereaved family, the advisability of obtaining a lawyer, or the opinion of a lawyer, and recommends that they consult with the Legal Counsel designated, and further recommends that the Legal Counsel be retained if a lawyer is to be retained. Defendants further aver

that some of the same members have represented, as was the fact in most cases arising in the Lower Peninsula of the State of Michigan, that the legal counsel will not charge in excess of twenty-five per cent (25%) of the amount of any recovery whether the recovery be effected by suit or settlement, and that this percentage would include expenses incidental to the investigation and any litigation of the claim.

"Defendants further aver that this representation of the fee charged has been eliminated by order of the president of the Trainmen contained in his letter to all lodges dated March 16, 1959, effective April 1, 1959, hereinafter set out in the First Affirmative Defense to this answer."

[79]

This letter was dated, of course, after this action was started in this court. And our reply leaves them to their proof as to those allegations.

However, I point out to your Honor that it is here (17) admitted that the representative of the Brotherhood of Railroad Trainmen, Legal Aid Department. recommends that legal counsel be retained, which is the issue in this case alleged and admitted.

In paragraph 6 of the bill of complaint it is alleged that "Plaintiff is further informed and believes, and therefore alleges as true, that representatives of the Brotherhood of Railroad Trainmen are reimbursed for their time in bringing injured employees or the survivors of the deceased employees to the officers of the Regional Counsel. Reimbursement is at the member representative's hourly rate of pay on the railroad. Members rep-

resentatives are also reimbursed for any out-of-pocket expenses incurred in bringing injured employees or the survivors of deceased employees to Regional Counsel."

The answer of the defendants, number 5 of their answer, is as follows:

> "Defendant's admit the allegations of paragraph six of the Bill of Complaint as being in existence up to and including the 31st day of March, A. D., 1959."

Which was, as I have said, after the suit was filed.

> (Continuing reading) "Defendants further aver that the said compensation and reimbursement has been terminated under the previously mentioned order of the (18) president of the Trainmen dated March 16, 1959."

[80]

Our reply to that answer is as follows:

> "Replying to paragraph 4 thereof—"

No, I have just referred to paragraph 5 but I neglected to read our reply to their paragraph 4, and I shall read it into the record at this time. (Reading):

> "The plaintiff shows that the defendants and each of them are precluded from denying the contents of the sub-paragraph under paragraph 5 of the Bill of Complaint, by reason of the admissions on behalf of the defendant Brotherhood and the findings of fact in a proceeding in the Supreme Court of the State of Illinois, to which proceeding and opinion reference is made at the top of page 6 in the defendants' answer, with reference to the matter an investigation as to the practices of the Brotherhood of Rail-

road Trainmen, etc., 13 Illinois, 2d 391; 150 Northeastern 2nd, 163.

"Replying to the second paragraph under paragraph 4 of the defendants' answer, the plaintiff shows that the admissions by the defendants therein set forth constitute solicitation of claims within the State of Michigan by the defendants or by part or all of the defendants and by the defendant Brotherhood, on behalf of the Regional Counsel or Legal Counsel of the defendant Brotherhood.

Replying to the third paragraph under Paragraph 4 of the defendants' Answer, the plaintiff shows that:

[81]

(19) "(a) The alleged order by the President of the defendant Brotherhood dated March 16, 1959, is alleged by the defendants in this paragraph to apply to the representation as to the fee to be charged by the Brotherhood's Regional Counsel or Legal Counsel and does not cover the many other courses of conduct which are the subject of this cause.

"(b) There is no assurance that each and all of the members of the defendant Brotherhood will comply with the terms of such orders as may be issued by the President of the defendant Brotherhood.

"(c) There is no assurance that if there were an order by the President of the defendant Brotherhood as alleged, the same might not be reversed by either this or a future officer of the defendant Brotherhood.

"Replying to the affirmative matters set forth in Paragraph 5 of the answer, wherein the defendants admit the allegations of paragraph 6 of the bill of complaint up to March 31, 1959, the plaintiff shows that even if the President of the defendant Brotherhood disseminated a communication dated March 16, 1959, the same does not constitute a defense in this cause for the reasons that:

"(a) Said purported communication by the President of the defendant Brotherhood does not cover all of the matters concerned in this cause, nor is it alleged to cover all of the matters of conduct concerned in this (20) cause.

"(b) There is no assurance that each and all of the members of the defendant Brotherhood will

[82]

comply with the terms of such orders as may be issued by the President of the defendant Brotherhood.

"(c) There is no assurance that if there were an order by the President of the defendant Brotherhood as alleged, the same might not be reversed by either this or a future officer of the defendant Brotherhood."

Now, in paragraph 7 of the bill of complaint alleges:

"Regional Counsel referred to above are attorneys selected by the defendant Brotherhood of Railroad Trainmen, in some fifteen 'regions' designated by said defendant to receive, through the methods and practices aforesaid, all Federal Employers Liability Act cases arising in their designated regions."

The answer of the defendants, carried under number 6 of their answer, says:

"Defendants deny each and every allegation of paragraph seven of the Bill of Complaint.

"Legal Counsel referred to above are attorneys designated by the defendant Trainmen in some seventeen regions designated by the said defendant as attorneys recommended for their qualifications and their integrity to be competent to prosecute claims arising under the Federal Employers' (21) Liability Act for members of the trainmen in their designated regions."

Our reply to that answer is as follows:

"Replying to the purported denials and affirmative allegations in Paragraph 6 of the defendants' Answer, the plaintiff shows that the second para-

[83]

graph under paragraph 6, in effect, admits the type of conduct alleged in paragraph 7 of the plaintiff's Bill of Complaint. The plaintiff further shows that the defendants are precluded from denying the conduct described in paragraph 7 of the plaintiff's Bill of Complaint by reason of the admissions of the defendant Brotherhood and opinion of the Court in said Illinois case to which reference is made at the top of page 6 of the defendants' Answer.

Paragraph 8 of our bill of complaint alleges:

"The Lower Peninsula of the State of Michigan, is the 'region' of one Edward B. Henslee, an attorney, of Chicago, Illinois, and his associates, for whom defendants, or some of them actively solicit, by the methods herein outlined, all cases of personal injury or death of railroad employees occurring in the State of Michigan, as plaintiff is informed and believes and thereupon alleges as true."

The answer of the defendants, carried under number 7 of their answer, says:

"Defendants deny all of the allegations of para-
(22) graph eight of the Bill of Complaint except that they admit the Edward B. Henslee referred to at one time was the Regional Counsel for a region including the Lower Peninsula of the State of Michigan and that he had associates. Defendants further aver that the said Edward B. Henslee died on November 22, 1958."

Our reply to that answer is as follows:

"Replying to Paragraph 7 thereof, with reference to the denial therein contained, the defendants are

[84]

precluded from denying the allegations of paragraph 8 of the plaintiff's Bill of Complaint by reason of the admissions on the part of the defendant Brotherhood and the findings of the Court in said Illinois case as described at the top of page 6 of the defendants' answer.

"Further answering said paragraph, the plaintiff lacks information sufficient to form a belief with respect to the allegation that Edward B. Henslee died either on November 22, 1958, or any other date and accordingly, neither admits nor denies the same but leaves the defendants to their proofs thereof.

"The plaintiff further shows that the conduct with reference to solicitation and other matters descriped in the Bill of Complaint are applicable to whatever Regional Counsel or Legal Counsel may have been in office or associated with the defendant Brotherhood as described in the Bill of Complaint

(23) and that the allegations of the Bill of Complaint with reference to said Edward B. Henslee refer to whoever acted as Regional Counsel or Legal Counsel for the defendant Brotherhood with reference to said matters described in the Bill of Complaint."

Paragraph 9 of the bill of complaint alleges that:

"Plaintiff further shows unto the Court, on information and belief, that, by and through the operations of the Legal Aid Department of the Brotherhood of Railroad Trainmen in the State of Michigan, large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen residing in Michigan and whose claims have arisen within the

[85]

State of Michigan, have been unlawfully and improperly solicited by said Brotherhood of Railroad Trainmen Legal Aid Department, through its members, agents and officers, and have been directed into and handled by the office of Regional Counsel Henslee and associates in Chicago, Illinois, and elsewhere, to the extent that a majority of such cases are so solicited and so handled."

The defendants deny each and every allegation of paragraphs 9, 10, and 11 in their number 8 of their answer and, for reply, the reply as filed by the plaintiff sets forth as follows:

"Replying to Paragraph 8 of the defendants' Answer, the plaintiff shows that the defendants are precluded from (24) the denials as to paragraphs 9, 10 and 11 of the Bill of Complaint by reason of admissions made by the defendant Brotherhood in

said case in the Illinois Supreme Court as cited at the top of page 6 of the defendants' Answer and also for the Court findings in that case. The plaintiff further shows that the defendants have failed to set forth any reason or reasons as to the denial of the existence of the statute as quoted in paragraph 11 of the Bill of Complaint."

We have not, of course, read that as yet, but it is a penal statute of this state.

Paragraph 10 of the bill of complaint alleges:

"That such solicitation, on an organized and systematized basis, interferes with and impedes the orderly administration of justice, adversely affects the relationship between the legal profession in the State of Michigan and the public, and causes, and

[86]

threatens to cause, irreparable damages to property rights of the public and the legal profession in the State of Michigan."

That is denied by the answer, as stated.

Paragraph 11 alleges that the methods of operation of the Legal Aid Department of the Brotherhood of Railroad Trainmen, as set forth above, violate the Penal Code of the State of Michigan, particularly Section 410 thereof, being Section 28.642 of Michigan Statutes Annotated, and it is quoted in its pertinent part in this paragraph, and I will (25) not read it into the record.

The Court: I see no need to. The Court will take judicial notice of that.

Mr. Kelly: Paragraph 12 alleges that matter in dispute in this case exceeds the sum of one hundred dollars, and in their answer the defendants deny that allegation.

Paragraph 12 then goes on to pray for relief by way of answer of the defendants and injunction from the conduct complained of, and I will not read that into the record because it is part of the bill of complaint.

So that there are affirmative defenses set forth, but that is a matter for the defendants to care for, I assume.

As the pleading stand, if the Court please, we believe that substantially all of the allegations of the bill of complaint, all of the material allegations in the bill of complaint, are admitted except as to paragraph 9 alleging that large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen residing in Michigan and whose claims have arisen within the State of Michigan, have been unlawfully and improperly solicited by said Brotherhood of Railroad Trainmen Legal Aid Department, through its members, agents and of-

[87]

ficers and have been directed into and handled by the office of Regional Counsel Henslee and associates in Chicago, Illinois.

As to that matter, we propose to present proofs to (26) the Court; and, further, as to the statements made by the Brotherhood of Railroad Trainmen in its proceeding in the Illinois Supreme Court which are relied upon by the defendants and mentioned also in our reply.

(To the reporter): Will you mark this, please?

(The booklet referred to was marked "Plaintiff's Exhibit 1.")

Mr. Kelly: I would like to offer in evidence plaintiff's Exhibit 1 entitled "Motion for Leave to File Petition for this Court's Declaratory Judgment or Directive Order Concerning the Practice of Law in the Respects Set Forth in the Petition," filed in the Supreme Court of Illinois, November Term, A. D. 1955. In the Matter of the Petition of the Brotherhood of Railroad Trainmen; and W. P. Kennedy, President and a member thereof; on behalf of the members, thereof, Petitioners, number 33877, as certified to by Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois.

Mr. Lumley: Your Honor, I object to the proposed plaintiff's Exhibit 1 for the reason that my examination of it indicates that it is a petition of the Brotherhood of Railway Trainmen and, as such, it does not constitute testimony.

I do not see how just the pleadings of any particular case would be admissible in this case.

(27) The Court: Is it a part of the—

Mr. Lumley: It doesn't involve the same parties.

The Court: Is it a part of the record in the Illinois case?

[88]

Mr. Lumley: It is a part of the record in the Illinois case, that's right.

The Court: It will be admitted, then.

Mr. Lumley: I would like to conclude my objection.

The Court: Go ahead.

Mr. Lumley: I believe that, as regards plaintiff's Exhibit 1, it is incompetent, irrelevant, and immaterial. It merely represents pleadings in a case rather than

testimony, and certainly it is not evidence of any testimony offered in that case, which would have to be used by counsel for impeachment purposes.

Mr. Kelly: I would like to read into the record from plaintiff's Exhibit 1 the following pages, 6 and 7, of the exhibit:

> "Under the Brotherhood's constitution, by-laws and other action approved by its membership, when a member is injured or killed in railroad operations, it is not only the right and privilege but the duty and obligation of member representatives of the Brotherhood, usually the Chairman of the Grievance Committee in the locale of the accident, to call upon the injured member or his bereaved family, and not (27) only explain to them that they can but recommend and urge that they do consult with the Regional Counsel and his associates. The representative informs them that (as is the fact) such consultation does not require them to retain Regional Counsel and will entail no financial obligation upon them unless they do retain such Counsel. There is no disavowal, however, of the fact that representatives do in fact not only urge members or survivors of the deceased members not only to consult, but to retain, Regional Counsel. Members are told
>
> [89]
>
> (as is the fact) Regional Counsel are not permitted to and will not charge in excess of 25% of the amount of any recovery, whether recovery be effected by suit or settlement, and that this percentage will include expenses incidental to the investigation and any litigation of the claim."

Mr. Lumley: Will you read the date of that petition, counsel, so we have it in the record?

Mr. Kelly: It does not appear to be dated, Mr. Lumley.

It says: "Respectfully submitted," signed "Brotherhood of Railroad Trainmen (A national railway labor union); W. P. Kennedy, President of the Brotherhood, By William C. Wines, Attorney for Petitioners."

It is filed in the November Term, A. D. 1955, of the Supreme Court of Illinois.

(28) Otherwise, it is not dated.

The Court: Does that cover your point?

Mr. Lumley: Yes, sir.

The Court: Very well.

Mr. Kelly: Reading further from page 7 of the exhibit:

> "Local Chairmen, or other member representatives of the Union, are reimbursed for their time in bringing injured members or the survivors of deceased members to the offices of Regional Counsel. In many instances member representatives of the union are employed to investigate claims, it having been found that their acquaintance with fellow-employee witnesses and their conversance with railroad operations make them, for many cases, the best investigator. Reimbursement is at the member rep-

[90]

> sentative's hourly rate of pay on the railroad, is made immediately, and is wholly independent of whether any money is recovered upon the claim or not. Member representatives are also reimbursed

for any out-of-pocket expenses incurred in bringing injured members or the survivors of deceased members to Regional Counsel and in investigating the case. Such reimbursement is likewise independent of the result of any claim."

Reading further at the top of page 6 of the exhibit, your Honor:

"Edward B. Henslee, a Chicago lawyer, is General (29) Counsel for the Brotherhood and is one of the 15 Regional Counsel. He has offices in Chicago."

The Court: Is there going to be considerable reading from this next exhibit?

Mr. Kelly: No, your Honor.

The Court: Why, if there was, we better give the reporter a break here.

Mr. Kelly: Will you mark this, please?

(The booklet referred to was marked "Plaintiff's Exhibit 2.")

Mr. Kelly: Exhibit 2 is offered in evidence.

Mr. Lumley: Defendants object to the admission of plaintiff's proposed Exhibit 2 in evidence on the ground that it is incompetent, irrelevant, and immaterial. It contains conclusions of the pleader. It was not testimony.

Particularly, I direct the Court's attention to the fact that the date of this particular pleading is the November Term, as far as I can tell here, 1955, which, of course,

[91]

from the standpoint of laying the foundation for the relief that the plaintiff seeks, is incompetent, irrelevant,

and immaterial because it is better than five years ago, and it does have no bearing upon whether the practices that are alleged to have been contained in the plaintiff's Exhibit 2 are now in operation.

Mr. Kelly: It is in the same category as Exhibit 1, (30) your Honor, another petition, an accompanying petition filed by defendant, The Brotherhood of Railroad Trainmen, in the Supreme Court of Illinois.

The Court: Let me ask you this: This is a part of the record of the Illinois case, Mr. Lumley?

Mr. Lumley: Of course, he is the one that is offering it, but I presume it is a part of the record, yes, your Honor.

The Court: Well, so far as you know.

Mr. Lumley: As far as I know, it is a part of the record.

The Court: It may be admitted.

Mr. Lumley: But I—

The Court: I understand.

Mr. Lumley: I want the Court to realize I am objecting to the record of the Illinois case.

The Court: I understand.

Mr. Kelly: Exhibit 2 is entitled: "Petition for This Court's directions with Respect to the Representation by Attorneys of Members of The Brotherhood of Railroad Trainmen and the Survivors of Deceased Members Arising Under the Federal Employer's Liability Act and the Railway Labor Act."

Filed: "In the Matter of the Petition of the Brotherhood of Railway Trainmen; and W. P. Kennedy, Presi-

[92]

dent (31) and a member thereof; on behalf of the members, thereof, Petitioners."

Filed: "In the Supreme Court of Illinois, November Term, A. D. 1955," being number 33877; and reading specifically from page 7 of the exhibit as follows:

> "Edward B. Henslee is both the General Counsel and one of the Regional Counsel for the Brotherhood, as Regional Counsel represents the interests of the Brotherhood and its members with respect to the following segments of the following railroads, respectively."

Now, without reading further, I will just refer to the fact that defendant includes all or portions of the states of Indiana, Ohio, Illinois, Pennsylvania; and as to Michigan, reading again: "All employees of railroads except those which run into the upper peninsula of the state."

The Court: I think at this time we better take a ten-minute recess.

(A brief recess was taken.)

Mr. Kelly: If the Court please, that concludes our presentation under the heading of issues in dispute, and we will refer to Mr. Lumley if he cares to make an opening statement. If not, we are prepared to proceed with our proof under paragraph 9 which is in dispute.

The Court: Mr. Lumley, do you wish to or do you wish to reserve it?

(32) Mr. Lumley: I didn't know that was an opening statement, your Honor.

I thought he started on his case. He read those things in the record as evidence, and Plaintiff's Exhibit 1 and

Plaintiff's Exhibit 2 were admitted in evidence as exhibits in the case.

[93]

Mr. Kelly: That is right; they are matters—

Mr. Lumley: That is not an opening statement. That is embarking upon his own case.

I am content now to continue with his own case and I will reserve my rights to make an opening statement at the time when we start in ours if the Court will permit me.

The Court: Very well.

Mr. Kelly: I offered Exhibits 1 and 2. They are part of the pleading in the Illinois Supreme Court on behalf of the defendant Brotherhood, as explanatory of the matters which are, we admitted in the pleadings; but as a different—the statements published in those records which are also in the pleadings. We haven't offered any proof as to disputed matters. We do not intend to. However, we are ready to go ahead with proof if counsel does not want to make an opening statement.

Mr. Lumley: If counsel is now saying that what he has done heretofore constitutes an opening statement of his claim, then I move that all of it be stricken for the reason (33) that an opening statement is a statement made by counsel as to what he intends to show and does not constitute evidence and is not testimony.

What he did in this particular case was to introduce into evidence two exhibits over my objection, which certainly constitutes not an opening statement but evidence received by the Court in substantiation of his claims in his bill of complaint, and I ask that it be stricken.

Mr. Kelly: I don't know whether Mr. Lumley was listening or not.

Mr. Lumley: I was.

Mr. Kelly: But I stated to the Court that those mat-
[94]
ters were not in dispute and were admitted in the pleadings, and I was going to state them in the record for the purpose of assisting the Court in making the findings of facts.

We are ready to go ahead.

The Court: Let's get on with the proofs.

Mr. Kelly: With our proofs, if counsel doesn't want—

Mr. Lumley: May I have a ruling on my motion to strike?

The Court: Your motion to strike is denied.

(34) WALSH, DAVID J., called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Kelly: For the purposes of the record, if your Honor please, and in opposition to the motion as made by the defendants, I would like to re-offer at this time in evidence plaintiff's Exhibits 1 and 2 and ask that they be received in the record at this time.

Mr. Lumley: Same objections.

The Court: Same ruling.

Mr. Lumley: Everything is the same.

The Court: We are saving time.

Mr. Kelly: Are the exhibits received at this time, your Honor please?

The Court: Yes.

Mr. Kelly: Thank you.

[95]

Direct Examination

By Mr. Kelly:

Q. What is your name, please?

A. My name is David J. Walsh.

Q. W-a-l-s-h?

A. Yes, sir.

Q. Where do you live, Mr. Walsh?

A. I live in Chicago, Illinois.

Q. What is your occupation?

A. I am supervisor of the clearing house for the Claims Research (35) Bureau, General Claims Division, of the Association of American Railroads.

Q. And is the Association of American Railroads a national organization?

A. Yes, sir.

Q. Who comprises that association?

A. Railroads operating in the United States.

Q. And how long have you occupied your position with that organization?

A. Since July 1, 1953.

Q. Will you state whether or not the business of that organization includes the keeping of records of claims filed against railroad members of the organization?

A. It does.

Q. And whether or not the keeping of those records is under your supervision?

A. It is, yes.

Q. And has been since July 1, 1953?

A. Yes.

Q. Is it the regular course of your business to keep those records?

A. It is, yes.

[96]

Q. I will ask you whether or not you have with you records of claims of Michigan residents under the Federal Employers' Liability Act against railroad members of the Association of (36) American Railroads.

A. Yes, I do.

Q. Will you produce them?

A. Yes. I have them right here.

Q. Now will you refer to these records and tell the Court what period of time they cover?

A. Yes. I have a group of cards here which covers cases reported during the period July 1, 1953, to March 31, 1955.

Mr. Lumley: May I ask that that testimony be stricken relating to any cards he may have between the years 1953 and 1955 on the grounds that as far as the issues in this case are concerned they are incompetent, irrelevant, and immaterial?

This case is being tried in 1961 for alleged things that happened in 1961, if they predicate that testimony upon what they want to seek an injunction in the future.

Mr. Kelly: The only issue in this case as we see it. Mr. Hall and myself for the plaintiff, is whether or not a large volume of these cases arising in Michigan reached the office of Regional Counsel Henslee and associates in Chicago over a period of several years during the operation of this legal aid department. That is

placed in issue in our bill and denied by the answer, and this is evidence offered in support of the bill.

The Court: It may admitted.

(37) Q. (By Mr. Kelly): You have identified records covering the period of July 1, 1953, to March 31, 1955, is that so?

A. Yes, that's correct.

[97]

Q. I am holding in my hand a number of cards on which are typed this legend: "F. E. L. A. cases involving Michigan residents reported to Claims Research Bureau during period July 1, 1953, to March 31, 1955."

Is that so?

A. Yes, that's correct.

Mr. Lumley: May I ask a question if he seeks to admit that in evidence, your Honor?

The Court: I do not think he has offered them yet.

I assume it is going to be marked as an exhibit but it has not been offered yet.

Mr. Kelly: Will you mark these, please?

(The group of cards referred to was marked "Plaintiff's Exhibit 3.")

Q. (By Mr. Kelly): Are these records kept under your supervision, Mr. Walsh?

A. Yes, they are.

Q. Are they made and kept in the regular order of your business and in the regular course of your business?

A. Yes, they are.

Q. Is it the regular course of your business to keep such records?

A. Yes, it is.

(38) Mr. Kelly: Will you mark this, please?

(The group of papers referred to were marked "Plaintiff's Exhibit 4.")

Q. (By Mr. Kelly): I will show you plaintiff's Exhibit 4, Mr. Walsh, and ask you what that is.

Mr. Lumley: Well, I think that will have to be identified so that you can offer it in evidence before you take testimony. It may be inadmissible.

Mr. Kelly: Thank you, Mr. Lumley. That is what I am asking him.

[98]

The Court: He is going to identify them. That was the question.

A. This is a listing of each of the cards which are in this exhibit.

Q. (By Mr. Kelly): This is a compilation of the pertinent information which is contained in the cards constituting plaintiff's Exhibit 3?

A. That's correct.

Q. Made for the convenience of the Court?

A. Yes, it is.

Q. Who made that schedule?

A. I made that personally.

Q. You made it personally?

A. Yes.

Q. It refers to these cards, Exhibit 3, is that right?

(39) A. Yes.

Mr. Kelly: Now, for the purpose of convenience, we offer plaintiff's Exhibit 4 in evidence, which the witness

has testified was made personally by him from his original records.

We will tender those records, Exhibit 3 for the use of counsel for the defendants if he cares to see them, and we will offer Exhibit 3 also. For whatever purpose. But we thought it would be less cumbersome in the file to offer the compilation.

The Court: I think it is apparent, the reason for it; so if you will let counsel examine them perhaps we can agree on something here.

Mr. Kelly: We offer plaintiff's Exhibits 3 and 4.

Mr. Lumley: May I ask a question now on Exhibit 3?

Mr. Kelly: Yes.

The Court: Go ahead.

[99]

Q. (By Mr. Lumley): Mr. Walsh, where did you get the information that is listed on the cards which constitute plaintiff's Exhibit 3?

A. It is supplied by the railroads.

Q. In other words, these cards merely reflect information that was given to you from the record of the independent railroad?

A. Yes.

(40) Q. So that the original records which represent the information that is listed on plaintiff's proposed Exhibit 3 are with the original railroads that settled the claims?

A. Yes.

Mr. Lumley: I object to it, your Honor, on the ground that it is not the best evidence, Exhibit 3.

Mr. Kelly: Your Honor please, this is offered under Section 27.902, Michigan Statutes Annotated, the business-records-evidence statute, which insofar as material here reads as follows:

> "Any writing or record whether in the form of an entry in a book or otherwise, made as a memorandum of any act, transaction, occurrence or event shall be admissible in evidence in all trials, hearings and proceedings in any cause or suit in any court in proof of said act, transaction, occurence or event if it was made in the regular course of any business and it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record including lack of personal knowledge by the entrant or maker, may be shown to affect its weight but not its admissibility."

[100]

It is the business of the—and has been so testified —the regular course of business of the Association of (41) American Railroads to keep such records. They are made under the supervision of this witness in the regular course of their business, and it is the regular course of business to make them and keep them as records. And it is clearly admissible under the statute.

Mr. Lumley: The court has ruled numerously that the so-called shop-book rule, which I believe is what counsel refers to, was not designed to render admissible that which has been heretofore inadmissible.

All of these railroads have original records of claims that they have settled or of the suits that have been

started, and those original records are kept by them; so that the so-called plaintiff's Exhibit 3 is merely a compilation of records that are in the original railroads in the first instance. and those records would be the best evidence of what they contain. It would appear to me.

That is why I make my objection.

Mr. Kelly: Here is an association of all the railroads, your Honor, whose very business is the keeping of these records, and it has been testified that they are so kept; and the objection which counsel has made of the lack of personal knowledge doesn't affect their admissibility.

It would not be possible to bring in every person who knows about the facts of this instance.

Mr. Lumley: I would like to supplement, if I may, (42) my objection, your Honor, which is on an entirely different ground and concerns both Exhibit 3, apparently, and Exhibit 4, since Exhibit 4 is supposed to be, for convenience, a compilation of the cards in Exhibit 3.

The Court: Go ahead.

[101]

Mr. Lumley: Looking at Exhibit 4, I find that there has been a certain number of cases allegedly instituted or handled in Michigan and handled in the State of Illinois.

Now, the so-called Michigan cases have been handled by many law offices. As is shown here, Cary & BeGole; Carl Gussin, and so forth.

As to that portion of the claim, I make my objection on the grounds that it is not in any way binding upon us. It would not be material in these particular proceedings which are directed to the parties involved.

May I show your Honor what I mean?

Mr. Kelly: I might say to your Honor that that is only one of our exhibits and it will be extended right down to the present time; and, of course, we do not claim anything for any of the other names on there excepting the ones we are referring to in this case, and we are prepared to demonstrate their participation from the entire exhibits.

The Court: I think the exhibit speaks for itself.

Naturally, the defendants cannot be bound by the litigation which on the face of this exhibit was not handled by (43) their firm.

That is your point, is it not?

Mr. Lumley: Yes, your Honor.

The Court: I do not think there is any question about that.

Mr. Kelly: We claim nothing for that.

The Court: Very well, we will receive the evidence under the rule, Section 27.902.

Well, go ahead, Mr. Kelly.

Mr. Kelly: Plaintiff's Exhibit 4 is entitled: "Settlements in F. E. L. A. Cases Involving Michigan Residents Reported to Claims Research Bureau During Period April 1, 1955, to December 31, 1955."

[102]

I think I have picked the wrong exhibit.

I would like to straighten it out.

We inadvertently picked a compilation covering a period April 1, 1955, to December 31, 1955, and had it marked "Plaintiff's Exhibit 4" as being taken from plaintiff's Exhibit 3 which covers a different period of time.

I would like to withdraw plaintiff's Exhibit 4 and have it stricken from the record for the time being and substitute for it and offer in evidence a similar compilation covering the same period as Exhibit 3.

The Court: I see no objection to that.

Mr. Kelly: Will you mark this, please?

(44) (The substituted group of papers referred to was re-marked "Plaintiff's Exhibit 4".)

Q. (By Mr. Kelly): Now showing you corrected plaintiff's exhibit 4, Mr. Walsh, I will ask you whether that is a compilation of settlements in F. E. L. A. cases involving Michigan residents reported to the Claims Research Bureau during the period July 1, 1953, to March 31, 1955.

A. Yes it is.

Q. Was that compilation or schedule prepared by you personally?

A. Yes.

Q. From the records constituting plaintiff's Exhibit 3 in your office?

A. Yes.

Mr. Kelly: May it be received in evidence?

The Court: I think you better submit it to counsel.

Mr. Kelly: Covering a different period of time.

Mr. Lumley: May I ask one question in regard to this, your Honor?

Q. (By Mr. Lumley): Mr. Walsh—

A. Yes.

[103]

Q. (Continuing):—when did you start this particular organization of which you are a member?

A. It was begun on July 1, 1953.

Q. So that I notice in this exhibit here, the proposed Exhibit 4 that you have, refers to years long prior to the time when you (45) were organized as an association.

A. Yes.

Q. 1947, 1948, 1949, 1950, 1951, 1952?

A. That's right.

Mr. Kelly: What are you referring to, Mr. Lumley?

Q. (By Mr. Lumley): Pages 4 to 5. As representing the years before you were even organized at all?

A. That's correct.

Q. You did't even keep records yourself of these years, did you?

A. Those were reports came to our attention.

Q. But you didn't keep records at all of these years, did you, in the ordinary course of your business, because you were not in business?

A. We were not in business at the time.

Mr. Lumley: I object to that exhibit, your Honor; at least to the extent that I brought out.

Mr. Kelly: Let me ask the witness this further question: Was the Association of American Railroad organized before 1953?

A. Yes, it was.

Q. (By Mr. Kelly): When was that organized?

A. I believe it was approximately 1921 or 1922.

Q. And the keeping of records in your office under the research claims division that you are supervisor of commenced on July (46) 1, 1953?

A. Yes.

Q. Is that correct?

A. That's right.

[104]

Q. You have assembled these records since that time as records—

Mr. Lumley: I think the questions are very leading, your Honor.

Mr. Kelly: All right.

The Court: Yes.

Rephrase it, Mr. Kelly.

Q. (By Mr. Kelly): You have kept records as part of the business of the Association of American Railroads' bureau of which you are an employee as furnished to you by members of the—by railroads constituting the membership of the Association of American Railroads. Is that correct?

A. Yes.

Q. Has it been part of the job to analyze these claims matters in your department?

Mr. Lumley: Objected to as leading.

Q. (By Mr. Kelly): What I am getting at is: Why did you keep this record for the prior years before the office that you are connected with started? Why did you keep these records?

A. They are more or less of historical significance.

Mr. Kelly: I think it all goes to the point that we are interested in here, that we are trying to direct the (47) Court's attention to: that these cases have been going into these offices even before the time when this particular office made the compilations, and they have made this

compilation from records which have been furnished to them and are equally admissible under the statute.

Mr. Lumley: I would like to have the record show that I renew my objection that I originally made to the mistaken plaintiff's Exhibit 4 in reference to this Exhibit 4.

The Court: Your objection is denied. The exhibit may be admitted and, of course, the weight of it is for the Court.

[105]

Mr. Kelly: Will you mark this, please?

(The group of papers referred to was marked "Plaintiff's Exhibit 5.")

Q. (By Mr. Kelly): I will show you plaintiff's Exhibit 5, Mr. Walsh, and ask you whether those are the records of claims F. E. L. A. cases, involving Michigan residents reported to the claims research bureau during the period April 1, 1955, to December 31, 1955.

A. Yes, they are.

Q. To shorten the record, are all of those records which you have in front of you, including plaintiff's Exhibits 3 and 5 and the others, of a similar nature kept in the regular course of your business?

A. Yes, they are.

(48) Q. Is it the regular course of your business to keep these records?

A. Yes, it is.

Mr. Lumley: What years do they cover, Mr. Kelly?

Mr. Kelly: April 1, 1955, to December 31, 1955.

(To the reporter): Will you mark this, please?

(The papers referred to were marked "Plaintiff's Exhibit 6".)

Q. (By Mr. Kelly): Did you also make a schedule of the contents of the cards constituting Exhibit 5, Mr. Walsh?

A. Yes, I have.

Q. Showing you plaintiff's exhibit 6, is that the schedule?

A. Yes, it is.

Q. Was that made by you from the records of exhibit 5?

A. Yes, it was.

Mr. Kelly: Plaintiff's exhibits 5 and 6 are offered in evidence.

[106]

Mr. Lumley: I wish to make the same objection to exhibit 5, that it is—I assume it is not the best evidence because you secured it the same way, did you not, Mr. Walsh?

A. Yes, that's true.

Mr. Lumley: So I object to exhibit 5 on the ground, first, that it is not the best evidence; secondly, that it is incompetent, irrelevant, and immaterial because it covers a period of time long prior to the issues that are involved in (49) this case.

As to Exhibit 6, I might ask one other question of the witness if I may, your Honor.

The Court: Go ahead.

Q. (By Mr. Lumley): Does this cover or do your records show where the accidents happened in these cases?

A. Yes, the records show that.

Q. I mean do the cards—

A. (Interrupting): Yes, the cards also.

Q. And Exhibit 4 and Exhibit 5 reflect where the accidents happened?

A. Yes.

Q. I note, for instance,—I am just taking a card out of the proposed Exhibit 5, and I see the accident happened January 10, 1954, at Chicago, Illinois.

A. May I see the card? Yes, that's correct; it happened in Chicago.

Mr. Kelly: Go ahead, answer the rest of the question.

The Witness: But the address of this claimant is shown as Holland, Michigan, which would make it come within that summary I gave you.

Mr. Lumley: I object to plaintiff's Exhibit 6 on the grounds that it does not represent the best evidence of the contents or of the information it purports to contain,

[107]

(50) and, because it covers certain years far prior to the issues involved in this case, I contend it is incompetent, irrelevant, and immaterial.

The Court: For the same reason as stated with reference to Exhibits 3 and 4, the objection is denied and the exhibits may be admitted.

Q. (By Mr. Kelly): We have taken the record down to December 31, 1955.

Do you have records with you covering the same matters during the year 1956?

A. Yes, I do.

Mr. Kelly: Will you mark these, please?

(The group of cards referred to was marked "Plaintiff's Exhibit 7".)

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 7, I will ask you, Mr. Walsh, whether those are records of F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the year 1956.

A. Yes, they are.

Q. From those records have you made a schedule containing the information in those records for use here in court?

A. Yes, I have.

Mr. Kelly: Will you mark this, please?

The papers referred to were marked "Plaintiff's Exhibit 8".)

(51) Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 8, I will ask you whether that is the schedule of information you have made from the records in Exhibit 7.

A. Yes, it is.

Q. Covering the calendar year January 1, 1956, to December 31, 1956?

A. Yes.

[108]

Mr. Kelly: Plaintiff's Exhibits 7 and 8 are offered in evidence.

Mr. Lumley: I would like to renew my same objection to Plaintiff's Exhibit 7 and Plaintiff's Exhibit 8, and I assume the Court will render the same ruling.

The Court: The Court will make the same ruling, and the exhibits may be admitted.

Gentlemen, I think we better stop for lunch.

At this time this court will stand recessed until one-thirty.

(A recess was taken until one-thirty o'clock p. m.)

(52) *Afternoon Session*

The Court: Mr. Kelly.

You have already been sworn, so just take the stand, Mr. Walsh.

WALSH, DAVID J., called as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination (continued)

By Mr. Kelly:

Q. Mr. Walsh, do you also have with you records of F. E. L. A. cases involving Michigan residents reported to your claims research bureau during the year 1957?

A. Yes, I do.

Mr. Kelly: Will you mark these, please?

(The group of cards referred to were marked "Plaintiff's Exhibit 9.")

Q. (By Mr. Kelly): I will show you Plaintiff's Exhibit 9 and ask you if these are the records we just referred to.

[109]

A. Yes, sir.

Q. Have you made a schedule of the contents of Exhibit 9 for the use of the Court in this case?

A. Yes, I have.

Mr. Kelly: Will you mark this, please?

(The group of papers referred to were marked "Plaintiff's Exhibit 10.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 10, I will ask you whether that is a schedule of settlements in F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the period January 1, 1957, to December 31, 1957.

A. Yes, it is.

Q. Is that prepared by you?

A. Yes, it was.

Q. From Exhibit 9?

A. Yes.

Mr. Kelly: Plaintiff's Exhibits 9 and 10 are offered in evidence.

Mr. Lumley: Same objections, your Honor.

The Court: Very well, the Court will make the same rulings as on Exhibits 3 to 8 inclusive, and the exhibits will be admitted.

Q. (By Mr. Kelly): You have with you the records of F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the year 1958?

A. Yes, I do.

Mr. Kelly: Will you mark these please.

(The group of cards referred to were marked "Plaintiff's Exhibit 11.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 11, I will ask (54) you whether those are the records from your office as just referred to for 1958.

A. Yes, they are.

[110]

Q. Have you made a schedule of the contents of Exhibit 11 for the use in this court?

A. Yes, I have.

Mr. Kelly: Will you mark these, please?

(The papers referred to were marked "Plaintiff's Exhibit 12.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 12, I will ask you if that is a schedule of the information contained in Plaintiff's Exhibit 11.

A. Yes, it is.

Mr. Kelly: Exhibits 11 and 12 are offered.

Mr. Lumley: For the record, your Honor, the same objections.

The Court: Same objections, and the same ruling by the Court.

Let's understand each other. When we say "same objections" and "same rulings," it is with reference to these cards and the schedule prepared pursuant thereto.

Mr. Lumley: Yes, your Honor.

Q. (By Mr. Kelly): Do you have with you the records of F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the year 1959?

(55) A. Yes, I do.

Mr. Kelly: Will you mark these, please?

(The group of cards referred to was marked "Plaintiff's Exhibit 13.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 13, I will ask you whether those are the records referred to.

A. Yes, they are.

Q. And whether or not you made a schedule of the information contained in those records for the use of the Court.

[111]

A. Yes, I have.

Mr. Kelly: Will you mark these, please?

(The papers referred to were marked "Plaintiff's Exhibit 14.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 14, I will ask you whether that is a schedule of settlements in F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the period of January 1, 1959, to December 31, 1959.

A. Yes, it is.

Q. Made by you from the records contained in Plaintiff's Exhibit 13?

A. Yes.

Mr. Kelly: Exhibits 13 and 14 are offered in evidence.

Mr. Lumley: Same objections in this case that I (56) made in all the other cases, your Honor, and I want to supplement my objection by including the fact that Exhibits 13 and 14 refer to cases handled during the period of January 1, 1959, to December 31, 1959, and I call your Honor's attention to the fact that that period of time, I believe, is after the petition in this case, or the bill of complaint, was filed.

Mr. Kelly: They are all offered—

Mr. Lumley (interrupting): Therefore, I claim that that is incompetent, irrelevant, and immaterial. It is not

covered by the pleadings in this case nor the issues that have been developed in this case.

Mr. Kelly: They are all offered as showing a course of conduct on the part of the defendants, persisting in the face of this pending injunction suit against them.

The Court: The exhibits will be admitted. The objection is denied.

Q. (By Mr. Kelly): Do you have with you records of your office of F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the year 1960?

[112] A. Yes, I have.

Mr. Kelly: Will you mark these, please?

(The group of cards referred to was marked "Plaintiff's Exhibit 15.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 15, I will ask you if those are the records just referred to.

(57) A. Yes, they are.

Q. Have you made a schedule of the information contained in Plaintiff's Exhibit 15?

A. Yes, I have.

Mr. Kelly: Will you mark these, please?

(The papers referred to were marked "Plaintiff's Exhibit 16.")

Q. (By Mr. Kelly): Now, showing you Plaintiff's Exhibit 16, I will ask you whether that is the schedule of settlements in F. E. L. A. cases involving Michigan residents reported to the claims research bureau during the period January 1, 1960, to December 31, 1960, taken from the records constituting Plaintiff's Exhibit 15.

A. Yes, it is.

Mr. Kelly: Exhibits 15 and 16 are offered in evidence.

Mr. Lumley: Same objection, your Honor, including the further objection that it covers a period of January 1, 1960, to December 31, 1960, which is definitely much later than the issues that were created here in the suit.

The Court: In other words, the same objections as to Exhibits 13 and 14.

The objection will be denied and the exhibits admitted.

Q. (By Mr. Kelly): So that the record will be complete, as I (58) understand it, Mr. Walsh, is it your testimony that these card records, Plaintiff's Exhibits 3, 5, 7, 9, 11, 13 and 15, are records in the office of the Association of American Railroads kept in the regular course of business?

[113]

A. Yes, they are.

Mr. Lumley: That is repetitious. That has all been asked and answered.

Mr. Kelly: If it has, I just wanted to make sure it is.

The Court: I don't recall.

Go ahead and answer the question. I don't recall if it was.

Q. (By Mr. Kelly): The answer is yes?

A. The answer is yes.

Q. Whether it is the regular course of business of the Association of American Railroads to keep such records.

A. Yes, it is.

Q. So kept under your immediate supervision?

A. Yes.

Q. The corresponding exhibits of the schedules taken from those records were made by you personally?

A. Yes, they were.

Q. From those records?

A. That's correct.

Q. Now, I will ask you, Mr. Walsh, whether or not you have made (59) a summary of the cases and settlements from those records in your office during the period July 1, 1953, to December 31, 1960?

A. Yes, I have.

Q. Was that made by you personally?

A. Yes, it was.

Q. From your records in your office?

A. Yes.

Mr. Kelly: Will you mark this, please?

(The paper referred to was marked "Plaintiff's Exhibit 17.")

Q. (By Mr. Kelly): That is, the records, Plaintiff's Exhibit 3 through 15 inclusive?

A. That's correct.

[114]

Q. Is that correct?

A. Yes. Yes, it is.

The Court: 3 through 16 you mean, don't you?

Mr. Kelly: Well, these original records.

The Court: All right.

Mr. Kelly: I offer Plaintiff's Exhibit 17 in evidence.

Mr. Lumley: Same objection.

The Court: The same ruling by the Court. The objection is denied, and the exhibit may be admitted for what it is, a summary, here.

(60) Mr. Kelly: I would like to read into the record from Exhibit 17, if the Court please, the following:

> "Total number of cases covering the period July 1, 1953, through the year 1960: 482. Total number of these cases, of the 482 cases, handled by the Henslee firm: 218."

Mr. Lumley: I submit, if the Court please, if Mr. Kelly is going to read that summary into the record, he should read it all, because it shows a certain pattern that is going down rather than up.

Mr. Kelly: Well—

Mr. Lumley: Well, look at it for yourself.

Mr. Kelly: I do not agree with counsel. The whole exhibit is in evidence and I prefer to refer to things that are pertinent to the Court.

The Court: Whatever portion of it is not read into the record by Mr. Kelly, it may be read in by you, Mr. Lumley.

Mr. Kelly: Of the total of 482 such cases covering the period referred to, 218 were handled by the Henslee firm. The total amount of settlements in those 480 cases was $5,357,480, of which the Henslee firm handled cases in which the payments totaled $2,352,469.

[115]

Q. (By Mr. Kelly): As I have examined the exhibits with the periodic schedules here, Mr. Walsh, not all of these cases have the settlement amounts paid included. Is that correct?

A. That's correct.

(61) Because they were not available?

A. That's right.

Q. So that this figure of total payments appearing on Plaintiff's Exhibit 17 is the total of the payments for the cases in which you have that total, have you?

A. Yes, that's right.

Q. But there are a number of cases in these exhibits as to which you have no amounts?

A. That's correct.

Q. Now, have you prepared from your records a list of F. E. L. A. cases involving Michigan residents pending with the Attorneys Henslee & Henslee, Chicago, Illinois, reported to the claims research bureau as of June 23, 1961?

A. Yes, I have.

Mr. Kelly: Will you mark this, please?

(The paper referred to was marked "Plaintiff's Exhibit 18.")

Q. (By Mr. Kelly): Showing you Plaintiff's Exhibit 18, I will ask you whether that is such a list.

A. Yes, it is.

Q. Prepared by you?

A. Yes, it was.

Mr. Kelly: Exhibit 18 is offered in evidence.

Mr. Lumley: May I ask a question on this proposed Exhibit 18?

(62) The Court: Go ahead.

Q. (By Mr. Lumley): Mr. Walsh, where did you get the information that you have placed upon the proposed Exhibit 18?

[116]

A. From our files in Chicago.

Q. From your files?

A. Yes.

Q. Through what source did the information reach your files?

A. From the various railroads involved.

Q. You never checked any of the court records?

A. No.

Q. There are court records in all of these pending cases?

A. Well, I don't know. They are all suits.

Q. You don't even know if they are suits?

A. No, I don't. They may be claims, in which case no suit has been filed.

Q. At least, you haven't checked the records of the court and you haven't checked the records of the companies that gave you the information?

A. No, we haven't.

Mr. Lumley: I object to it, your Honor, on the grounds, one, that it isn't the best evidence of what it contains.

It is highly self-serving. We don't even have the benefit of their records, because that is not a record that is kept in the ordinary course of business and it has not been (63) established; and, secondly, I object to it because it carries on the period that follows the date of the institution of this suit and it is therefore inadmissible because it is not in support of the issues that are involved herein.

But, most important, it definitely is not the best evidence, and we do not have sufficient information, nor does Mr. Walsh have sufficient information.

Mr. Kelly: The same objection was made earlier this morning, that we didn't have personal information. That [117]
is not an objection as to the admissibility. It may go to the weight of it under the statute.

Mr. Lumley: Those aren't the records, Mr. Kelly.

Q. (By the Court): That is a summary prepared from the cards, is it not?

A. Yes, yes.

Mr. Lumley: Where are the cards?

Q. (By Mr. Kelly): Do you have the cards here?

A. No, the cards are in our files in Chicago.

Q. You can produce those cards if counsel wants to see them?

A. Yes, I can.

Mr. Lumley: The cards or their records.

Mr. Kelly: What?

Mr. Lumley: The cards or their original records.

Q. (By Mr. Kelly): Will you produce them for Mr. Lumley if he wants to examine them?

(64) A. Yes, I will.

Mr. Kelly: We will make that offer, your Honor, in good faith, to have them available for Mr. Lumley within the next day or two as a condition for admitting the exhibit if the Court wants to admit it.

Mr. Lumley: I don't think that should be a condition.

Mr. Kelly: I think it is properly admissible on that understanding, your Honor please.

Mr. Lumley: They are able to bring all the other cards here, your Honor. There is no reason why those cards should not have been brought.

Mr. Kelly: I will take the blame for it. I didn't ask him to bring them, but I will ask him.

Mr. Lumley: You asked him to bring the summary.

Mr. Kelly: I will ask him to bring the cards covering these twenty-six cases if you want to stand on the objection, Mr. Lumley.

[118]

Mr. Lumley: No, you are placing me in a position that is embarrassing. I don't want, however, to be placed in that position.

I object to the introduction of that exhibit because it is not the best evidence of even the records of the company that he represents.

Mr. Kelly: Well, I think they might be admissible (65) even without them, your Honor please, but my associate, Mr. Hall, suggests that we waive the introduction of the exhibit; and that is all.

The Court: Do you want to withdraw Exhibit 18?

Mr. Kelly: Yes.

The Court: Very well.

Mr. Kelly: You may cross-examine.

Cross Examination

By Mr. Lumley:

Q. Mr. Walsh, what is your position with the Association of American Railroads?

A. I am supervisor of the clearing house.

Q. Who is your immediate superior?

A. Mr. K. A. Carney.

Q. What is the function of your particular department?

A. We accumulate statistics with respect to employee injury claims.

Q. What is the purpose of accumulating those statistics?

A. We can make analyses such as we have seen here in these exhibits. We can also study the costs of the various types of injuries and so forth.

Q. Do you have any other purposes?

A. Yes, there are other purposes, too.

[119]

Q. Is one of your purposes the investigation of lawyers handling those claims?

A. I wouldn't say lawyers actually.

(66) Q. Well then, let's carry it a step further. Is one of your functions to investigate the individuals who are in any way associated with the presentation of those claims?

A. I would say yes to that.

Q. Isn't it a fact that you have made it your business to cooperate with the various bar associations throughout the country in connection with railroad claims?

A. Yes.

Q. Isn't it a fact that you are under the employ of the various railroads?

A. Yes, we are.

Q. Each railroad contributes so much money to your department?

A. That's true.

Q. And the purpose of your particular research division is not to analyze various claims so much as it is the studied attempt on the part of your department to investigate these claims, investigate the individuals who make the claim, investigate the parties who represent them in making their claims? Isn't that true?

A. No, I can't say as to that.

Q. When did you first cooperate with the State Bar of Michigan in connection with the pending litigation?

A. I believe Mr. Kelly brought that up this morning. It dates back some years.

Q. I didn't ask you what Mr. Kelly brought up this morning. I (67) ask you to answer my question, please.

A. I don't have the exact date at my fingertips.

Q. Well, can you give us an approximation of that date?

A. I believe it was in 1953 if I am not mistaken.

[120]

Q. Yes. And you have been the chief investigating department for the State Bar of Michigan since that time, haven't you?

A. I believe we have, yes.

Q. Yes. And you have compiled this data specifically for the railroad purposes, haven't you, in handling claims?

A. I don't know. I don't make the policy there.

Q. What?

A. I don't make the policy as to that.

Q. You say your immediate superior is Mr. Carney?

A. Yes.

Q. Isn't it a fact that Mr. Carney has testified at various hearings throughout the country?

A. Yes, he has.

Q. Now, the American Association of Railroads perform a good many functions in addition to the one that is handled by your department, isn't that true?

A. Yes, that's true.

Q. They are also lobbyists for the railroads, aren't they?

A. Yes, they are.

Q. And they are paid a very sizeable sum of money each year by the railroads to carry on their functions, aren't they?

(68) A. Yes.

Mr. Kelly: No one objected to any of this, if the Court please, but I think it is getting in the argumentative field and entirely incompetent on the inquiry here.

Mr. Lumley: It goes to the question of the credibility of this witness.

Mr. Kelly: I think if you ask the witness himself what he has done.

Mr. Lumley: He is working for a principal.

Mr. Kelly: I think that is—

[121]

Mr. Lumley: I am laying the foundation about these records.

Mr. Kelly: I don't care to object. I just thought there was a time when it should end.

The Court: All right, let's go here.

What was the last question, Mr. Reporter?

(The last question and answer were read.)

Q. (By Mr. Lumley): Now, isn't it a fact that those so-called cards that you have in your possession and which have been introduced in evidence in this case and which are lying on the desk up there, Exhibits 3, 5, 7, 9, 11, 13, and 15, are called A-3 cards?

A. Yes, they are.

Q. Isn't it a fact that those cards are used as the vehicle to investigate the solicitations of cases?

(69) A. Yes, they are.

Q. So that, in fact, as far as your particular department is concerned, you are a sort of detective body designed to investigate cases after they have been settled. Isn't that true?

A. Yes.

Q. You don't do any investigative work before the cases are settled or presented to court, do you?

A. Not as a general rule, no.

Q. As a general rule, you do that after they have been settled?

A. That's true.

Q. You investigate the lawyer, don't you?

A. I couldn't say.

Q. How he got the case?

A. Yes; in that respect, yes.

Q. You investigate the individual to see if his injuries are as permanent as he claimed they were in court?

[122]

A. Yes.

Q. You do this not for the State Bar, do you? You do this for the railroads?

A. Yes.

Q. Isn't it axiomatic with the railroads that they haven't been in sympathy with the F. E. L. A. Law ever since it has been enacted?

A. I am sorry, I can't say anything about that.

Mr. Kelly: I object to it.

(70) The Court: I think that is going a little far afield here.

Q. (By Mr. Lumley): I am going to read to you some testimony of a certain individual that you have indicated as Mr. Carney and ask you if that is your conception—

I haven't completed my question.

Mr. Kelly: I understand it.

Q. (By Mr. Lumley, continuing):—and ask you if that is your conception of the functions of the department you represent.

Mr. Kelly: I object to counsel presenting this witness the testimony of someone else, not himself, and asking him to judge it for this Court.

It is clearly incompetent, irrelevant, and immaterial.

Mr. Lumley: I am asking him not to judge the testimony.

I am asking to see if this is a fair statement of the purposes of his particular department in connection with this work.

Mr. Kelly: That is even more incompetent and immaterial.

Mr. Lumley: I am not asking him to pass upon the testimony. I am taking the testimony of his superior and asking him if that is correct.

[123]

The Court: You are asking to pass upon the testimony, coming in through the back door, and I do not think (71) that is proper.

Mr. Kelly: Yes.

Mr. Lumley: I am asking him, if I may state it, your Honor: Is this information correct?

The Court: Put the question to him that way. Don't put it to him as Mr. Carney's question.

I do not care what Mr. Carney said.

Q. (By Mr. Lumley): Now, isn't it the primary function—

Mr. Kelly: Just a minute. Have we left that question?

Mr. Lumley: No, sir. I have left the question, yes, in deference to his Honor's opinion.

The Court: I told you—

Mr. Kelly: (interrupting): All right.

Mr. Lumley: I accepted the hint the Court gave me.

Mr. Kelly: That is nice of you.

Q. (By Mr. Lumley): Isn't it the primary function of your particular department to interview the railroad employee cases which have been disposed of through settlement or otherwise and to determine from them a number of things, one of which, and perhaps the most

important of which, is what pressures were applied upon the individual to employ any counsel; secondly, to determine the identity of the persons providing that pressure—

Mr. Kelly (interrupting): Well, number one—

(72) Q. (By Mr. Lumley, continuing):—thirdly—

Mr. Kelly: Just a minute.

Mr. Lumley: I have to complete the question.

Mr. Kelly: No. You are asking two or three questions at once which is objectionable; and it is also objectionable for counsel to repeat what he has already covered

[124]

in his cross-examination. And he has already asked this witness whether his department of the Association of American Railroads investigates these cases after they have been completed, and now he is asking the same question over again in just a different way and I object to it.

I think the record should not be so extended, and I do not think it is competent.

The Court: How many subdivisions are you going to add onto this question?

Mr. Lumley: There are only three subdivisions, your Honor, and that covers what we claim are the functions.

The Court: Finish the question. Go ahead.

Mr. Lumley: Now will you read that question, Mr. Reporter?

The Court: Start with the second one and I think we will have it.

Mr. Lumley: The second one, yes.

(The reporter read as follows): "Secondly, to determine the identity of the persons (73) providing that pressure—"

Q. (By Mr. Lumley, continuing):—thirdly, to determine his then-physical condition to determine whether or not he was the totally disabled person that he reported himself to be at the time his suit was tried or his case was disposed of?

Is that what your function is?

Mr. Kelly: That is the same question already been asked and answered. I think there should be a limit.

The Court (to the witness): Answer the question.

A. I would say yes.

Q. (By Mr. Lumley): And isn't it an additional function that you determine from the particular claimant anything else of importance that might be of interest to the individual railroads as to medical treatment he got or the disposition of his claim?

[125]

A. Yes.

Q. Now, who contacted the bar association first? Did the State Bar Association of Michigan contact your department or did you contact them?

A. I can't answer. I wasn't aware of the negotiations and progress.

Q. Were you subpoenaed to come here today?

A. No, I wasn't.

Q. You came of your own free will?

A. Yes, I did.

(74) Q. Where is your main place of operation where you operate—

A. Chicago.

Q. (Continuing): on behalf of the company?

A. In Chicago.

Q. So you came all the way from Chicago to testify in these proceedings without any more than a request?

A. That's correct.

Q. Were you paid costs to come here?

A. No, I wasn't.

Q. Were you promised any costs or fees of any kind to come here?

A. No, I wasn't.

Q. You came here, then, at the expense of your company, is that right?

A. Yes.

Q. Now, these cards which have been referred to in the record, these A-3 cards,—and I don't want to repeat all the exhibits for the record; I think they are all understood now—I am going to let you hold these cards in your hand temporarily and ask: What records do you have in your department besides these particular cards?

A. Well, we have all types of records.

Q. Let us know what kind of records you have.

[126]

A. Well, we have correspondence among other things.

Q. With whom?

A. Well, we have day-to-day correspondence, of course.

(75) Q. Do you have any other records in any particular file as to each claim?

A. Not as to each claim, no.

Q. Do you have letters from the various railroads that employ you?

A. Yes, we do.

Q. Is that where you get your information that you put on those A-3 cards?

A. No, we don't.

Q. You do not investigate each claim yourself, do you?

A. No, we don't.

Q. You don't go to the court to find out if it resulted in a judgment or it was a settlement?

A. No, we don't.

Q. You don't know whether, as far as you are concerned—you don't know for sure whether the attorney represented the party in court, do you?

A. That's correct.

Q. As far as you know, you don't know whether the attorney presented the claim.

A. That's right.

Q. That's right. I notice that in plaintiff's Exhibit 16 the firm of Kelly, Kelly & Kelly is listed. Is that correct?

A. Yes, they are; yes.

Q. Did you investigate the firm of Kelly, Kelly & Kelly to find (76) out how they happened to get that claim?

A. That I don't know.

[127]

Q. No. Now I am going to show you plaintiff's Exhibit 8 and ask you if you do not notice in the Michigan cases there the name of A. C. Lumley.

A. Yes, I do.

Q. Did you investigate me to find out if I ever represented that claim or was attorney of record in any description?

A. I don't know.

Q. No, you don't.

A. No.

Q. What if I were to tell you that I did not appear in that claim at all and never had my name affiliated with it? What would you say?

A. I couldn't say anything.

Q. Now, in all of these particular claims where you dwell on Henslee & Henslee—let's take the exhibit, plaintiff's Exhibit 4. There are quite a few cases in there of L. M. Marko in Detroit, aren't there?

A. Yes, there are.

Q. Do you know who L. M. Marko is?

A. I only know his name.

Q. You only know his name. Where did you get his name?

A. From these cards.

Q. That is all you know about it?

(77) A. That's all I know.

Q. Do you know whether your department, through Mr. Carney or yourself or any other agent, made any investigation of Mr. Marko?

A. I can't answer that. I don't know.

Q. Will you examine those various exhibits which are compilations of the A-3 cards and tell me how many cases are represented by L. M. Marko in Michigan, having to do with F.E.L.A. cases?

[128]

A. I would say approximately sixty-one or sixty-two if I added correctly.

Q. And didn't the fact there were sixty-one cases that were being delivered to L. M. Marko in Detroit indicate to you that maybe it would merit some investigation by your department?

Mr. Kelly: If the Court please, I do not understand that this witness has anything to do with investigation.

He keeps records, number one. As to that, the question is argumentative.

The Court: I do not think the question is properly put.

Mr. Kelly: I object to it.

Q. (By Mr. Lumley): In view of the fact that L. M. Marko had sixty-one cases extending over the period covered by these compiled exhibits, did your company make any investigation to your knowledge of Mr. Marko?

(78) A. I don't know. I can't say.

Q. Isn't it also true, since you made this compilation yourself—isn't it also true—

A. Yes.

Q. (Continuing): that a large number of Chicago firms also handled Michigan cases?

A. Yes, they do.

Q. Now, isn't it further true that the Brotherhood of Railroad Trainmen, that is, the individual claimants, travel between cities and towns both in Illinois to Detroit and back again? Isn't that true?

A. Yes, they do.

Q. So that in many respects they are just as much at home in Chicago, Illinois, as they are in Detroit? Isn't that correct?

[129]

Mr. Kelly: That is argumentative, if the Court please.

The Court: It is not proper. The objection will be sustained.

Q. (By Mr. Lumley): Now, did you have any data as to the number of claimants who contacted the firm of Henslee & Henslee in Chicago on the question of whether or not those claimants operated trains in the Chicago area or worked on trains in the Chicago area?

A. I have no information, no.

Q. How many times have you testified for the various state bars?

(79) A. This is the first occasion.

Q. To your knowledge, how many times has Mr. Carney testified for the state bars?

A. I couldn't say, I have no knowledge.

Q. You have no knowledge at all?

A. Not on my own memory, no.

Q. Have you had operatives in the State of Michigan investigating various Michigan claimants in connection with this suit?

A. Yes, we have.

Q. How long have you had them here?

A. Well, I couldn't say. I don't control their assignment.

Q. Well, you know you have got them here, so can you tell us when they first arrived here or you first started to bring them into Michigan?

A. I believe when our department was organized in 1953. A man came over at that time.

Q. So the information that you have on the A-3 cards, if I may be permitted to summarize it, and the information that you set forth on the various compilations, schedules that were taken from the A-3 cards, is information

[130]

that you received from the various railroad companies in which you made no investigation to check the accuracy of that information.

A. Yes.

Q. Have you got or have you made a compilation of A-3 cards in cases where claims were settled directly without a lawyer?

(80) A. I have never made a compilation, no.

Q. You do have such records, do you not?

A. Yes, we do.

Q. And those records were reported to you by the various railroad companies much in the same manner as the ones involved in this case.

A. Yes.

Q. Could you get those records?

A. Yes.

Q. Mr. Walsh, can you tell us whether the majority of the claims are settled direct without lawyers or not?

Mr. Kelly: How is that competent, your Honor please?

I think it is incompetent, irrelevant, and immaterial and I am going to object to it.

The Court: I do not think so. If he knows, he can tell us.

A. That is the majority, whether the majority are settled with or without counsel.

Q. (By Mr. Lumley): Yes, what is—let me ask it this way and I will withdraw the last question.

Isn't it a fact that the majority of the claims against the railroad are settled directly without attorneys?

A. I don't think that I can answer that. I don't know.

Q. You don't have such records?

A. We have records of direct settlements, yes.

(81) Q. But they haven't been compiled?
[131]

A. No, they haven't

Q. Do they represent, however, a large portion of the railroad claims?

A. I don't know.

Q. Do you keep records of doctors who have testified in those cases?

A. Yes, we do.

Q. Is that done in behalf of the railroads?

A. Yes, it is.

Q. What is the purpose of keeping those records?

A. As you indicated, doctors who testified in certain cases.

Q. Have you filed complaints to medical associations against certain doctors

Mr. Kelly: If the Court please, I think that all of this is highly immaterial.

The Court: I do not see what that has got to do with this.

Mr. Lumley: That is all, your Honor.

Mr. Kelly: Have you got the exhibits there?

Mr. Lumley: No.

Mr. Kelly: You brought them back with you.

Mr. Lumley: Oh.

Re-direct Examination

By Mr. Kelly:

Q. Counsel asked you numerous questions about whether you had (82) investigated this, that, or the other thing, Mr. Walsh.

I understand your duty is not to investigate but keeping records. Is that right?

A. That's correct.

Mr. Kelley: That is all.

[132]

(The witness was excused.)

Mr. Kelly: Will you mark this, please?

(The booklet referred to was marked "Plaintiff's Exhibit 19.")

Mr. Kelly: Defendants' answer appears to make some issue of whether or not this is properly a class action in this court due to the number of individuals which would otherwise be involved, and on discovery of certain information by discovery procedures of this Court we were furnished with plaintiff's Exhibit 19 by the defendants, and it is a directory of the grand lodges and subordinate lodges of the Brotherhood of Railroad Trainmen as of January, 1959, and we would like to offer it in evidence as to that portion which reflects the number of lodges in the State of Michigan just on the point of the propriety of this class action.

Any objection

Mr. Lumley: What exhibit would this be?

The Court: 19.

Mr. Lumley: 19?

I submit, if the Court please, that Exhibit 19 is (8) incompetent, irrelevant, and immaterial for the reason that this is a suit in which they are seeking an injunction; and, certainly, I do not believe that any of the individual lodges or the chairmen of those lodges, if they are not named parties here, can be under the injunctive force of this suit.

The Court: That is not my understanding of the purpose of it.

Mr. Kelly: If it is a class action, it is to enjoin all members, officers, or agents.

Mr. Lumley: That is my objection.

The Court: I think it may be admitted. It will be received.

[133]

Mr. Kelly: For the purposes of the record, referring to Exhibit 19, I would like to state on the record without reading the entire list of lodges that Exhibit 19 discloses there are some thirty-six subordinate lodges of the Brotherhood of Railroad Trainmen in the State of Michigan.

The plaintiff rests, your Honor.

(The plaintiff rested.)

The Court: I think at this time we can all stand a recess.

(A brief recess was taken.)

Mr. Kelly: May Mr. Walsh be excused?

(84) Mr. Lumley: Yes, yes.

The Court: Yes, you may be excused, Mr. Walsh.

Mr. Lumley: I was wondering, your Honor. I did not mean to interrupt.

The Court: Go ahead.

Mr. Lumley: I was wondering if we could have just a little more time. I think it could shorten things considerably.

The Court: All right. How much time do you need?

Mr. Lumley: Oh, ten minutes. I promise you that it might make a big difference.

The Court: All right, you may have the other ten minutes, We will take an additional ten-minute recess.

(A brief recess was taken.)

Mr. Lumley: Your Honor, I want to make a motion at this time for a decree dismissing the bill of complaint filed in this cause.

I would like to preserve the right under the rule to proceed with our defense in the event this motion is denied.

(Mr. Lumley argued the motion in behalf of the defendants.)

[134]

The Court: Do you wish to reply, Mr. Kelly?

Mr. Kelly: Not unless the Court wants to hear me.

(Mr. Kelly argued in opposition to the motion in (85) behalf of the plaintiff.)

The Court: The Court at this time is going to deny the motion, and you can proceed with your proofs.

Mr. Lumley: The defendants rest.

(The defendants rested.)

The Court: Defense rests.

The Court feels that briefs should be filed in this matter.

Now, the usual time period of fifteen days. Mr. Kelly would have fifteen days and Mr. Lumley fifteen days within which to reply, and then Mr. Kelly ten days within which to answer; but, if you gentlemen happen to be pressed for time, I will grant you some additional time.

Mr. Naughton: I think we would like to order the record, your Honor. On that particular circumstance, perhaps there could be some extension of time.

(Colloquy off the record.)

The Court: Upon completion of the record the court reporter, of course, will notify me, and then I will notify counsel and at that time, why, Mr. Kelly will have fifteen days or enough to get your brief in.

Mr. Kelly: Is that three months from now, John?

Fifteen days would be enough for my account.

(86) The Court: All right, let's get it and we will fix the time for filing briefs when the record is completed.

In the meantime this matter will stand continued from day to day.

This court stands recessed.

[135]

THE STATE BAR OF MICHIGAN,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN,

No. T—640

DECISION

(Filed September 12, 1962)

This is an action based on a bill of complaint filed in behalf of the State Bar of Michigan on January 28, 1959. Answer thereto was filed on behalf of the defendants on June 9, 1959. A reply was filed by plaintiff on June 16, 1959. Suffice it to say that subsequent amended pleadings were withdrawn.

It was agreed between counsel that the record in this case should be transcribed before the filing of briefs. This was completed, and the matter was ready for disposition by this Court approximately May 1, 1962, including a motion to strike a portion of plaintiff's reply brief having to do with decrees entered in similar situations in other jurisdictions.

With reference to the motion to strike, the same is hereby denied, as this Court may consider any authorities it deems applicable.

An examination of the aforesaid pleadings discloses in substance that the practices complained of were in existence up to May 31, 1959. It is the claim of defendants that they have been in compliance with the decree entered in the case of In re Brotherhood of Railroad Trainmen as reported in 150 Northeastern, 2d Series, at page 163, as evidenced by the letter of March 16, 1959, as set

forth in the first affirmative defense, from W. P. Kennedy, President, and directed to all lodges and members and to all legal counsel, Brotherhood of Railroad Trainmen. Because of the indefiniteness and uncertainty there-

[136]

in in relation to the practices complained of, such a defense position is untenable.

In the aforesaid Illinois case, among other rulings and directives, it was held as follows:

> "The objective of the Brotherhood in seeking to secure competent legal representation of its members can be accomplished without lowering the standards of the legal profession. The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood.
>
> "The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully."

The problem of recommendation of counsel by the Brotherhood is the nub of the proceedings presently before this Court, the right of freedom of speech being basically involved.

[137]

This same matter has been before the courts of the states of Illinois, Iowa, Oklahoma, Virginia, Nebraska, and Missouri. The majority of these states, in one form or another, have approved the decisions of the Illinois Supreme Court, Missouri being the only state to prohibit it, and the State of Virginia prohibiting recommendation of any particular counsel.

This Court feels that the plaintiff is entitled to relief.

Plaintiff has submitted a proposed decree with which this Court is in accord, with the following exceptions:

1. The word "all" at the end of line 4 of paragraph 6 on page 3 will be deleted.

2. Subparagraph (d) on page 5, the last line thereof, will be rephrased as follows: "the employment of any particular lawyer or group of lawyers by such person."

3. Subparagraph (e) on page 5 is approved but hereby designated as "subparagraph (f)," and in place and stead thereof shall be inserted subparagraph (e), as follows: "(e) Engaging in any activities, conduct, or endeavor condemned by the Supreme Court of Illinois in the opinion above referred to."

I should not close without adding the following:

The first affirmative defense is without merit. See Seifert v. Buhl Optical Company, 276 Michigan, 692, and cases therein cited.

The third affirmative defense is without merit, as is set forth in the Illinois case aforesaid.

Upon the above corrections and additions being made, a decree accordingly will be subscribed and enrolled in this court.

[138]

I believe that I should make the following observation with reference to subparagraph (e), having to do with the decision of the Illinois Supreme Court, and that is that although certain specific activities and conduct as contained in the Illinois decision were not specifically pleaded in the instant suit, nevertheless, by the defendants' answer, they have been indirectly injected into this litigation and should be covered by the Court's order.

As requested by the office of Mr. Arthur G. Lumley, a copy of this opinion is being forwarded to the office of Henslee & Henslee in Chicago, Illinois.

(Signed) John C. Dalton,

John C. Dalton,

Circuit Judge.

Dated: September 12, 1962.

THE STATE BAR OF MICHIGAN,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN,

No. T—640

DECREE

(September 14, 1962)

At a session of said court, held in the Circuit Courtroom in the County Building, Jackson, Michigan, this 14th day of September, 1962.

Present: Hon. John C. Dalton, Circuit Judge.

This cause having come on to be heard on the bill of complaint filed by plaintiff, the answer of defendants thereto, and the reply of plaintiff to said answer, and the parties being in court by their respective counsel, and proofs having been taken in open court, and thereafter the parties, through their respective counsel, having filed briefs with the court, and the court having examined the pleadings, having duly considered the evidence and the

[139]

briefs of counsel, and being fully advised in the premises, from which it appears to the court that the material facts alleged in the bill of complaint are true, the court therefore finds as follows:

1. The State Bar of Michigan is a public body corporate, charged with the duty to aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession and the public, and in promoting the interests of the legal profession in the State of Michigan.

2. The Brotherhood of Railroad Trainmen is a national railway labor organization, with principal office in Cleveland, Ohio, but having branches, members, officers and agents throughout the United States, including the State of Michigan.

3. The individual defendants, Frank J. Carr and L. M. Hasbrouck, of Jackson, Raymond Fieberkorn and Thomas W. Fletcher, of Detroit, W. C. Coryell, of Okemos, L. E. Singer of Plymouth, E. V. Surdam of Grand Rapids, H. F. McCall of Birmingham, R. J. Jackson, and L. A. Russell, of Durand, A. V. Grandstaff, of Dearborn, W. T. Ellsworth, of Allen Park, R. J. Snow, of Melvindale, and William E. B. Chase, of Livonia, are members, officers and agents of defendant Brotherhood of Railroad Trainmen residing within the State of Michigan, and there are other members, officers and agents of said defendant Brotherhood of Railroad Trainmen, within the State of Michigan, constituting a class so numerous as to make it impracticable to bring them all before the court, as to all of whom there are common questions of law and fact affecting their several rights and against all of whom a common relief is sought.

4. In or about the year 1930, the Brotherhood of Railroad Trainmen organized and established a "Legal Aid

[140]

Department" as a division of said Brotherhood of Railroad Trainmen, the name being changed, on or about January 1, 1959, to "Department of Legal Counsel."

5. Under the Brotherhood's constitution, by-laws and other action approved by its membership, when a member is injured or killed in railroad operations, member representatives of the Brotherhood call upon the injured

member or his bereaved family, and recommend and urge that they consult with, and retain, the Regional Counsel to represent such member or his survivors in the claim for damages resulting from such injury or death.

6. Regional Counsel, referred to above, are attorneys selected by the defendant Brotherhood of Railroad Trainmen, in some seventeen "regions" designated by said defendant, to receive, through the methods and practices aforesaid, Federal Employers Liability Act cases arising in their designated regions.

7. Edward B. Henslee, attorney of Chicago, Illinois, was designated Regional Counsel, his region including all of Michigan, except the Upper Peninsula. Since his death, in 1958, his associates have acted as Regional Counsel, now called "Legal Counsel".

8. Large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen residing in Michigan and whose claims have arisen within the State of Michigan have found their way into the Henslee offices in Chicago, Illinois for upwards of fifteen years preceding the date of this decree, as the result of the above described activities of the Brotherhood of Railroad Trainmen, its members, officers and agents in the State of Michigan.

[141]

9. Such activities, on an organized and systematized basis, interfere with and impede the orderly administration of justice, adversely affect the relationship between the legal profession in the State of Michigan and the public, and cause, and threaten to cause, irreparable damages to property rights of the public and members of the State Bar of Michigan.

10. The methods of operation of the Legal Aid Department of the Brotherhood of Railroad Trainmen, as set forth above, violate the Penal Code of the State of Michigan, particularly Section 410 thereof, being Section 28.642 of Michigan Statutes Annotated, which provides in part as follows:

> "Any person, firm, co-partnership, association or organization of any kind, either incorporated or unincorporated, or any of the officers, agents, servants, employees, or members of any such person, firm, co-partnership, association or organization of any kind, either incorporated or unincorporated, or of any division, bureau or committee of such association or organization, either incorporated or unincorporated, who shall directly or indirectly, individually, or by agent, servant, employee or member, solicit any person injured as the result of an accident, his administrator, executor, heirs or assigns, his guardian, or members of the family of the injured person, for the purpose of representing such person in making claim for damages or prosecuting any action or causes of action arising out of any personal injury claim against any other person, firm or corporation, or to employ counsel for the purpose of such solicitation, shall be guilty of a misdemeanor * * *."

[142]

11. The matter in dispute in this case exceeds the sum of one hundred and no/100 ($100.00) dollars.

It is therefore Ordered, Adjudged and Decreed:

That, in the procurement, within the State of Michigan, of the employment of a lawyer to render any legal services, the respondents the Brotherhood of Railroad Train-

men, Frank J. Carr, L. M. Hasbrouck, Raymond Fieberkorn, Thomas W. Fletcher, W. D. Coryell, L. E. Singer, E. V. Surdam, H. F. McCall, R. J. Johnson, L. A. Russell, A. V. Grandstaff, W. T. Ellsworth, R. J. Snow, and William E. B. Chase, and all other members, agents and officers of the Brotherhood of Railroad Trainmen in the State of Michigan, and all persons in any way or in any manner acting by, through and under them or either of them, are hereby jointly and severally permanently enjoined and restrained from, in any way or in any manner:

a. Telling any person or his representatives that said person has a cause of action, the amount he is entitled to recover, where suit should be filed, or doing any other act or thing which constitutes the practice of law within the State of Michigan;

b. Negotiating or attempting to negotiate contracts of employment for legal services on behalf of any lawyer or lawyers;

c. Accepting pay or any gratuity or benefit whatsoever, directly or indirectly, from any lawyer, person or organization for services in obtaining contracts of employment for legal services;

d. Making unsolicited calls upon any person for the purpose of soliciting contracts for the employment of a

[143]

lawyer by such person, or for the purpose of recommending or urging the employment of any particular lawyer or group of lawyers by such person;

e. Engaging in any activity, conduct or endeavor condemned by the Supreme Court of Illinois in In re Brotherhood of Railroad Trainmen, 150 Northeastern Reporter 2nd, 163.

f. Conspiring with any resident or nonresident lawyer to violate the laws of Michigan concerning the practice of law within the State of Michigan, or the Canons of Legal Ethics imposed by the Supreme Court of Michigan on lawyers licensed to practice law in the State of Michigan.

John C. Dalton,
Circuit Judge.

[144]

CLAIM OF APPEAL BY DEFENDANTS AND PROOF OF SERVICE

(Filed October 2, 1962)

The Brotherhood of Railroad Trainmen, Frank J. Carr, L. M. Hasbrouck, Raymond Fieberkorn, Thomas W. Fletcher, W. C. Coryell, L. E. Singer, E. V. Burdam, H. F. McCall, R. J. Johnson, L. A. Russell, A. V. Grandstaff, W. T. Ellsworth, R. J. Snow, and William E. B. Chase, and all other members, agents and officers of the Brotherhood of Railroad Trainmen in the State of Michigan, defendants and appellants herein, by Walter M. Nelson, their attorney, severally claim an appeal from the Decree dated September 14th, 1962 of Hon. John C. Dalton, Jackson County Circuit Judge, and appellants severally take a general appeal therefrom.

/s/ Walter M. Nelson,
Attorney for Defendants-Appellants,
1138 Dime Building,
Detroit 26, Michigan.

Henslee, Henslee and Naughton,
Of counsel for Defendants-Appellants,
139 No. Clark Street,
Chicago 2, Illinois.

Dated: October 1st, 1962.

[145]

PROOF OF SERVICE

County of Wayne—ss.

Walter M. Nelson, being first duly sworn deposes and says that on October 1st, 1962 he served a true and carbon copy of the attached Claim of Appeal by defendants upon Messrs. Kelly, Kelly and Kelly, attorneys for plaintiff-appellee, 210 W. Franklin Street, Jackson, Michigan, and Mr. J. Cameron Hall, attorney for plaintiff-appellee, 1323 Dime Building, Detroit 26, Michigan, by placing the same in a carefully sealed and sufficiently stamped envelopes legibly addressed to said attorneys at their said addresses and by depositing said envelopes in the United States mail receptacle in the Dime Building in Detroit, Michigan;

And further deponent sayeth not.

/s/ Walter M. Nelson.

Subscribed and sworn to before me this 1st day of October A.D. 1962.

/s/Louise C. Kushigian,
Notary Public, Wayne County, Michigan.
My commission expires Nov. 11th, 1962.

[146]

PLAINTIFF'S EXHIBIT 1

No. 33877

In the

SUPREME COURT OF ILLINOIS

November Term, A.D. 1955.

In the Matter of the Petition of the Brotherhood of Railroad Trainmen; and W. P. Kennedy, President and a member thereof; on behalf of the members, thereof,

Petitioners.

MOTION FOR LEAVE TO FILE PETITION FOR THIS COURT'S DECLARATORY JUDGMENT OR DIRECTIVE ORDER CONCERNING THE PRACTICE OF LAW IN THE RESPECTS SET FORTH IN THE PETITION.

Petitioners, the Brotherhood of Railroad Trainmen (an international railway labor organization) and W. P. Kennedy (its President), invoking this Court's inherent original jurisdiction over the practice of law in Illinois, respectfully move this Court for leave to file the accompanying Petition for this Court's Declaratory Judgment or Directive Order With Respect To the Practice of Law in regard to the matters set forth in the Petition.

Petitioners show in the Suggestions In Support of This Motion that the Petition presents a most important and very urgent operation of the extent to which a railway labor union subject to the Federal Railway Labor Act (U. S. C. A. 45, Secs. 151 to 164) may afford to members the services of lawyers selected by the Brotherhood in claims against railroad employers, principally but not exclusively arising out of personal injuries and deaths occurring in railroad operations, may urge such members to avail themselves of the services of such lawyers, may compensate member representatives of the Brotherhood for service and to reimburse them for expenses incurred in recommending such attorneys, accompanying injured members or the surviving family of deceased members to such attorneys and investigating such claims.

Respectfully submitted,

Brotherhood of Railroad Trainmen
(a national railway labor union),

W. P. Kennedy,
President of the Brotherhood

By William C. Wines,
Attorney for Petitioners.

SUGGESTIONS IN SUPPORT OF THE FOREGOING MOTION

Substance of the Averments of the Petition Sought to Be Filed

The Brotherhood of Railroad Trainmen is the Largest Railway Labor Union and One of the Oldest Labor Unions in the World. It is Older than either the American

[148]

Federation of Labor or the Congress of International Organizations. Petitioner Kennedy is its President.

Petitioner is the authorized bargaining representative for its members under contracts with very nearly all of the nation's railroads. These contracts are subject to the provisions of the National Railway Labor Act (U.S. C. A. 45, Secs. 151 to 164), which Act authorizes the Brotherhood to represent its members in claims and grievances against their employers, arising out of railroad operations.

The Brotherhood's Legal Aid Department

Railroading is one of the most hazardous occupations in the world. It is more hazardous than mining. The work of railroad trainmen comprises in general the most hazardous phase of railroading. For many years prior to 1929, it was the fact (and despite the efforts of the Brotherhood, it is still true) that in many thousands of instances when trainmen were seriously injured or killed in railroad operations, claim agents for the railroads effected small and wholly inadequate settlements with such

injured trainmen or the personal representatives of deceased trainmen. This they were able to do because such injured trainmen or representatives of the deceased trainmen were themselves unversed in the law and had no competent legal advice. Moreover, it was the practice of many railroads to discharge injured employees unless they settled their claims for injuries without suit or before making claims entirely.

On the other hand, it was true before the formation of the Brotherhood, has been true ever since and is still true that many lawyers frequently abuse the confidence of their clients by:
[149]

(1) Effecting low settlements in the case in order to obtain a higher settlement in some other case against the same railroad,

(2) Incompetently preparing and processing such cases upon the law or the facts,

(3) Not fully and fairly explaining to the client the terms of the employment, so that the client, after having assented to settlement, finds the proceeds thereof surcharged with items for expenses of litigation, medical expense, expenses of one sort and another or the like, which are not legitimate, or if legimate, were not explained to him before the settlement was concluded, as well as in other ways.

The objects of the Brotherhood are the amelioration of the condition of railroad trainmen in matters of compensation, hours, seniority, pension, tenure, working conditions and safety. It is to the interest of the Brotherhood and its members that adequate compensation be recovered for every injury resulting from violation of a safety appliance measure, or from other instances of neg-

ligence, *not only for the sake of the injured member or the survivors of a deceased member, but because the exaction of such adequate compensation from the railroad is a strong deterrent to these violations of safety appliance measures and unsafe practices that take such a heavy toll of health, well-being and life. The exaction of adequate compensation for each injury or death due to unsafe railroad practices is to be advantage of every member of the Brotherhood, whether or not he himself is ever injured or killed.*

Such adequate compensation cannot in general be exacted if members of the Brotherhood are persuaded by

[150]

claim agents either to settle their own claims or to place them in the hands of incompetent, inexperienced, or otherwise inadequate counsel.

In 1930, A. F. Whitney, then President of the Brotherhood, in a public utterance to the Brotherhood's membership, declared that in his "several years' experience as an officer of the Brotherhood," it had come to his attention that "members of the organization and the dependents of members who had been killed while engaged in railroad service" had "fared rather badly at the hands of railroad claim agents in some instances, as well as at the hands of so-called ambulance-chasing lawyers" and that "settlements wholly inadequate in the light of the seriousness of the injuries and the responsibility of the employers had been made with members of the Brotherhood who were either entirely devoid of their rights in such matters or who had been induced to make cheap settlements by misrepresentations indulged in by those who sought to effectuate these settlements. He therefore urged the establishment of a "Legal Aid Department" for the Brotherhood.

In accordance with the constitution, by-laws and other action of the Brotherhood and its membership, there are at present 15 Regional Counsel for the Brotherhood, each such Counsel representing the Brotherhood and its members with respect to the territory assigned to him.

Edward B. Henslee, a Chicago lawyer, is General Counsel for the Brotherhood and is one of the 15 Regional Counsel. He has offices in Chicago.

Regional Counsel, including Henslee and his associates in his practice, represent the Brotherhood and its members in labor relations with the railroads by whom the Brotherhood's members are employed.

[151]

Such representation includes, *inter alia,* the rendering of legal assistance in the matter of negotiating and enforcing collective bargaining agreements between the Brotherhood and its members, on the one part, and the employing railroad or railroads, on the other part, the advising of the Brotherhood and its members as to the scope, intent and effect of contracts in effect or proposed, the processing of grievances on behalf of individual members or groups of members by negotiation, arbitration or in proceedings under the Railway Labor Board under the Railway Labor Act (45 U. S. C. A., Sections 151-188, incl.), and the like. More particularly, Regional Counsel in general and Edward B. Henslee and his associates in particular, advise upon, process, negotiate, and where necessary litigate claims with respect to rates of pay, overtime pay, seniority, working conditions and safety matters.

Under the Brotherhood's constitution, by-laws and other action approved by its membership, when a member is injured or killed in railroad operations, it is not only the right and privilege but the duty and obligation of mem-

ber representatives of the Brotherhood, usually the Chairman of the Grievance Committee in the local of the accident, to call upon the injured member or his bereaved family, and not only explain to them that they can but recommend and urge that they do consult with the Regional Counsel and his associates. The representative informs them that (as is the fact) such consultation does not require them to retain Regional Counsel and will entail no financial obligation upon them unless they do retain such Counsel. There is no disavowal, however, of the fact that representatives do in fact not only urge members or survivors of the deceased members not only to consult, but to retain, Regional Counsel. Members are told

[152]

that (as is the fact) Regional Counsel are not permitted to and will not charge in excess of 25% of the amount of any recovery, whether recovery be effected by suit or settlement, and that this percentage will include expenses incidental to the investigation and any litigation of the claim.

Local Chairmen, or other member representatives of the Union, are reimbursed for their time in bringing injured members or the survivors of deceased members to the offices of Regional Counsel. In many instances member representatives of the union are employed to investigate claims, it having been found that their acquaintance with fellow-employee witnesses and their conversance with railroad operations make them, for many cases, the best investigator. Reimbursement is at the member representative's hourly rate of pay on the railroad, is made immediately, and is wholly independent of whether any money is recovered upon the claim or not. Member representa-

tives are also reimbursed for any out-of-pocket expenses incurred in bringing injured members or the survivors of deceased members to Regional Counsel and in investigating the case. Such reimbursement is likewise independent of the result of any claim.

Charges Before the Chicago Bar Association Precipitating This Petition and Motion

The Committee on Inquiry of The Chicago Bar Association has preferred a complaint against Edward B. Henslee and three of his associates (Edward B. Henslee, Jr., Walter N. Murray, and Frank H. Monek) charging these lawyers with the unprofessional solicitation of personal injury and death cases arising out of railroad operations. [153]

To be sure, the complaint does charge acts which, if the acts were in fact committed, would raise questions other than the single question sought to be presented by the accompanying Petition. They charge, for instance, that Henslee and his associates divide fees with laymen and that Henslee and his associates employ "runners" or "touters." These charges have been, however, categorically denied by the answer of Henslee and his associates. Petitioners do not ask any determination of the questions of fact propounded by the charges mentioned in this paragraph and the denials thereof. They must try these charges before the Committee if the charges are persisted in.

What Petitioners do seek, however, is this Court's declaratory Judgment or Directive Order, directed to the members of the Grievance Committee and Board of Managers of The Chicago Bar Association as this Court's Commissioners under Rule 58, as to whether the candidly admitted

facts above summarized transgress any canon of ethics in the light of the considerations submitted in these Suggestions.

I.

This Court has inherent jurisdiction to enter a Declaratory Judgment or a Directive Order to its Commissioners under this Court's Rule 58 in the matter of the question presented by this Petition.

Of course, this Court has jurisdiction of and superintendence over the practice of law, whether by licensed lawyers or unlicensed practitioners. *In re Day,* 181 Ill. 73. It has frequently exercised this jurisdiction not only on reports transmitted to it under Rule 58, but in original proceedings filed by The Chicago Bar Association. *People* v. *People's Bank,* 344 Ill. 462.

[154]

If it be said that the adjudication sought in this case is an "advisory opinion" beyond the jurisdiction of this Court, the answer is simple and brief:

There is now pending before this Court's Commissioners a proceeding which, upon the pleadings, has propounded a question of law. This Court has the same inherent authority to define issues of *fact* by ruling upon questions of *law* that any Court has in framing the issues of fact to be determined by a Master, Special Commissioner, Referee, or other inquiry judicial or quasi-judicial officer or tribunal.

Moreover, the provisions of the Civil Practice Act have recently been held to be available, where the ends of justice require, even in original proceedings in this Court. And the Declaratory Judgment Act is, in virtual substance, a provision of the Civil Practice Act.

We cannot imagine that The Chicago Bar Association, its Board of Managers and its Grievance Committees who are this Court's Commissioners under Rule 58, would challenge this Court's jurisdiction to instruct them as to the proper scope of their inquiries. If such challenge should be forthcoming the considerations developed above are the answer thereto.

II.

No contested Question of Facts is tendered by the Petition sought to be filed.

It may be suggested that the Petition sought to be filed tenders issues of fact upon its face, or it may be suggested that an answer denying the allegations in the Petition sought to be filed will form such issues. And this Court's inexorable rule that it will not, in the first instance, try

[155]

issues of fact in an original proceedings even though it has jurisdiction to try such facts may be invoked to prevent entertainment of the tendered Petition at this time.

If such a suggestion is made, the answer is as follows:

Petitioners recognize that insofar as their Regional Counsel are charged with acts other than or different from those described in the tendered Petition, orderly procedure requires a trial of the issues joined by denial of those charges before this Court's Commissioners and not before this Court. Indeed, as a practical matter, this Court could do little else than refer such issues of fact back to its Commissioners.

But there is no denial that Petitioners' Regional Counsel in fact do all of the things described in this Petition. Counsel for the complainant before a Grievance Com-

mittee has declined either to reply to or move to strike Petitioners' Counsel's answer to the charges, which frankly admits the conduct described in the tendered Petition. Petitioners and their counsel at the present time, therefore, have no means of finding out, save by this Court's adjudication, whether their counsel's *admitted* conduct does or does not transgress the canons of professional ethics. An adjudication that Petitioners' counsel's *admitted* acts do or do not transgress the canons of professional ethics will greatly narrow the issues to be tried.

Petitioners' counsel are perfectly willing to go to trial on questions of fact as to whether they split fees, whether those counsel employed 'touters" and "runners" or as to whether those counsel have committed acts other than those they frankly admit. They do not, however, wish to

[156]

go to trial on the question as to whether member representatives of the Brotherhood who are not employed by Petitioner's counsel are Petitioners' counsel's agents; for that question is one of pure law.

III.

Failure to entertain this Petition at this time will seriously prejudice the Brotherhood, its members, and its Regional Counsel and will entail wholly unnecessary expenses of time, energy and money, not only upon petitioners and their counsel, but upon injured members, their families counsel for complainant, and the unpaid Commissioners of this Court.

The single question tendered by the Petition sought to be filed is a simple one.

A direct ruling that Petitioners' *admitted* conduct is or is not proper will greatly simplify for all concerned the proceedings before this Court's Commissioners.

If it is the purpose of the complainant's counsel and the Commissioners to bring dozens, scores, or hundreds of Petitioners' counsel's former clients before the Commissioners merely to elicit the *admitted* fact that they were prevailed upon to use Petitioners' counsel by the urgings of member representatives of the Brotherhood and that such member representatives were compensated for their time and effort, and were reimbursed for their expenses in the matter of prevailing upon such injured members or survivors of deceased members to retain Petitioners' counsel, no useful purpose whatever will be served. Several years of the time of the Commissioners and counsel for the complainant (all of whom are unpaid) will be consumed. The time and energy of Peti-

[157]

tioners' counsel will be consumed. Injured persons will be forced to give depositions or come to Chicago.

As we have said, with respect to any charges of matters other than those admitted, Petitioners' counsel must perforce go to trial upon questions of fact raised by their denials of such charges.

IV.

The Authorities sustain Petitioners' contention that Railroad Labor Unions may provide counsel for their members in grievances, including personal injury and death claims arising out of railroading, may urge members to retain such counsel, and may compensate member representatives for their services in effecting liaison between injured members or the survivors of deceased members and such counsel.

In *Ryan* v. *Pennsylvania Railroad*, 268 Ill. App. 364, an injured railroad man had settled directly with the railroad after statutory notice of attorney's lien had been served by the then Regional Counsel for the Brotherhood. The injured plaintiff had been prevailed upon to retain Regional Counsel *by the very means described in the tendered Petition*! The railroad company contended that the contract of retainer was obtained by unprofessional means and was, therefore, void. The Court, rejecting this contention, declared that it was "unworthy of the able lawyers who made it."

The National Railway Labor Act (45 U. S. C. A., Sections 151-164) authorizes railroad unions or Brotherhoods to represent their members in grievances with the employing railroads. A railroad man who has lost both legs certainly has a "grievance" against the railroad. This is

[158]

true, of course, whether it is ultimately determined that the loss of legs is, or is not, actionable under the Federal Employers' Liability Act, the Safety Appliance Act, or other cognate Federal statutes.

The Brotherhood has no means of vindicating its members' claims for such "grievances" except in the Courts. (It should be noted that the Pennsylvania Railroad is presently denying the right of Brotherhoods to call strike with respect to past "grievances" of individual members.)

If the Brotherhood undertakes to represent its members in Illinois courts without lawyers it will be accused —and guilty—of unlicensed and unauthorized practice of law.

The Chairman of the Standing Committee on Professional Ethics and Grievances, American Bar Association, Henry S. Drinker, Esquire, in his recent work, Legal Ethics, published in the Legal Studies of the William Nelson Cromwell Foundation and printed by Columbia University Press, New York, in 1953, says, on page 167:

> "It is not believed that the Canon will prevent the labor unions from finding lawyers to advise their members. The whole modern tendency is in favor of such arrangements, including particularly employer and cooperative health services, the principles of which, if applied to legal services would materially lower and spread the total cost to the lower income groups. The real argument against their approval by the bar is believed to be loss of income to the lawyers and concentration of service in the hands of fewer lawyers. These features do not commend the profession to the public."

[159]

This Court is fully cognizant of the realities, actualities and the pragmatic exigencies of personal injury law in Illinois, and particularly in Chicago. Cases in which hideously injured railroad men or their survivors have been prevailed upon to settle for pittance, are a matter of com-

mon knowledge. See, for a particularly shocking example of this practice, the decision of the U.S. Court of Appeals for this Circuit, in *Marshall* v. *New York Central Railroad Company*, 218 F. (2) 900, in which case, according to evidence uncontradicted by the defendant on Motion for Directed Verdict, the almost illiterate widow of a section-hand was induced to take $4000.00 "in full settlement" of a claim for the death of her husband and breadwinner when an admittedly defective wheel caused the derailment of a car, admittedly equipped with hand-rails sufficient to protect only five of its 21 passengers. (This is not a case in which Regional Counsel were employed.)

Cases in Chicago pend from four to five years before coming to trial and, if appealed, pend for from one to two years in the Appellate Court and this Court. During this time, men without legs, without arms, without eyes, or with broken backs or broken necks must live. If their own unions cannot provide a means of financing them while they lie in hospital beds or sit in wheel-chairs as the years roll by, a potent weapon indeed has been put into the hands of the railroad claim agent: the threat of starvation for the injured, the dying and their families.

There are, however, even more compelling reasons so far as legal ethics is concerned why the Brotherhood is eminently justified in advising its members to retain Regional Counsel.

[160]

In the first place, all of the members of the Brotherhood (and the Brotherhood is the Federal stautory representative of its members) have a definite economic and, therefore, legally cognizable interest in every claim for personal injuries. Recoveries, or failure of recoveries, set precedents. This is true whether such recoveries are re-

viewed by the higher Courts, result from lower Court verdicts, or are effected by settlements out of Court; for lower Court verdicts and settlements, as well as higher Court opinions, set patterns in the field of railroad injury litigation as they do in every other field.

The canonical inhibitions against "champerty" are directed against those who have no interest in a possible lawsuit except such interest as they generate for themselves by intruding themselves into it. But members of labor unions, like members of trade associations and other groups, have a wholly legitimate interest in such litigation as will affect not only the parties involved, but the entire trade or industry. No one would gainsay, for example, the right of a title insurance company to finance litigation on the part of one who was not even insured by the company if this Court's opinion would determine liability by title guarantors in hundreds of future cases.

Finally, it is a self-evident fact—and we are certain that the Honorable members of The Chicago Bar Association's Board of Managers and Grievance Committee will not deny the fact—that lawyers who do not represent Brotherhoods frequently do not realize the importance of obtaining not only a monetary recovery but continued tenure for a man with many years of seniority and accrued pension rights. A railroad will pay, let us say, $10,000.00 in settlement of a claim if the man will agree to cease railroading whereas it will pay much less than that amount if it must continue to employ him.

[161]

Petitioners represent to this Court that counsel selected by Petitioners see to it that Regional Counsel pay as much attention to seniority and accrued pension rights

as to net amount of recovery. If they do not they will not hold their posts as Regional Counsel.

V.

This case is of such National importance as to merit this Court's discretionary entertainment of the tendered Petition at this time.

The question presented by this case is one of great importance to all railroad men, to all organized labor and, therefore, to all the employers of such labor.

It should elicit this Court's decision at the earliest possible moment.

We therefore most respectfully, but very earnestly, seek this Court's prompt entertainment and disposition of the question proffered by the Petition accompanying this Motion.

Respectfully submitted,

Brotherhood of Railroad Trainmen
(a national railway labor union),

W. P. Kennedy,
President of the Brotherhood

By William C. Wines,
Attorney for Petitioners.

[162]

PLAINTIFF'S EXHIBIT 2

No. 33877

In the

SUPREME COURT OF ILLINOIS

November Term, A.D. 1955.

In the Matter of the Petition of the Brotherhood of Railroad Trainmen; and W. P. Kennedy, President and a member thereof; on behalf of the members, thereof,

Petitioners.

PETITION FOR THIS COURT'S DIRECTIONS WITH RESPECT TO THE REPRESENTATION BY ATTORNEYS OF MEMBERS OF THE BROTHERHOOD OF RAILROAD TRAINMEN AND THE SURVIVORS OF DECEASED MEMBERS IN MATTERS ARISING UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT AND THE RAILWAY LABOR ACT.

Petitioners, Brotherhood of Railroad Trainmen, and W. P. Kennedy, President and a member thereof, by William C. Wines, their counsel on due notice to the Chicago Bar Association, its Board of Managers and the members of its Grievance Committee, for this their Petition for instructions in respect to the matters hereafter set forth respectfully show unto the Court that:

1. As more fully hereafter appears, this Petition invokes this Court's original and inherent jurisdiction and power of superintendence over the practice of law in the [163]

Courts of Illinois. That jurisdiction and power may be exercised summarily or otherwise and by all such judgments, orders, writs, rulings, or process as may be appropriate.

2. As more fully appears hereafter, this Petition presents a most important and urgent question, emerging from the facts hereafter narrated and precipitated by the certain proceedings before the Grievance Committee of the Chicago Bar Association hereafter mentioned, in the field of the ethics of lawyers in their relation with bona fide labor organizations in general and in particular with labor organizations whose relations with railroad employers are subject to the Federal Railway Labor Act (45 U. S. C. A., Sec. 151-164). That question is fairly delineated as follows:

> A. A Railroad Brotherhood, organized for the General purpose of ameliorating railroad trainmen's working conditions, including compensation, hours, seniority, pension, security, working conditions generally, and with respect to matters of health, bodily welfare and safety in railroad operations, has since 1930 maintained a legal aid department. This department is staffed by members of the Bar of Illinois and other states. The Brotherhood encourages, without requiring, its members to repair to that department for legal advice and representation in railroad injury and death cases. The Brotherhood requires various local representatives to call upon injured members or the survivors of members killed in rail-

road accidents and to inform the injured members or the survivors of members, of the services available from the department. Such representatives advise injured members and survivors of deceased members to avail themselves of the services of the department. The department compensates its member representatives for their time and effort only in the matter of bringing injured employees or survivors of deceased members to the office of the legal aid department and for services of investigating the accident from which claims have arisen. The compensation is no wise contingent upon recovery on any such claim. Does the operation of the Brotherhood's legal aid department under such auspices violate any canon or principle of professional ethics?

3. The petition presents the related question:

A. Does the Railway Labor Act (45 U. S. C. A., Secs. 151-188) which authorizes the Brotherhood to represent its members in the matter of "Grievances" against carriers, by fair implication and intent authorize the Brotherhood to represent such members in personal injury and death cases arising from accidents in interstate commerce notwithstanding any rule or doctrine of state law which may exist?

The Organization and Character of the Brotherhood of Railway Trainmen.

4. The Brotherhood of Railroad Trainmen is a railway labor organization bound in its relations with railroad employers by the terms of the Railway Labor Act and all other pertinent acts of the Acts of Congress, all or nearly all of the Brotherhood's members being engaged in commerce among the several states.

5. Petitioner W. P. Kennedy is a member of the Brotherhood, is its President, and joins its Petitioner in this [165]

matter on behalf of himself and all other members of the Brotherhood of Railroad Trainmen.

6. The Brotherhood's members and the survivors of deceased members have many claims arising or sued upon in Illinois.

7. Railroading is one of the most hazardous occupations in the world. It is more hazardous than mining. The work of railroad trainmen comprises in general the most hazardous phase of railroading. For many years prior to 1929, it was the fact (and despite the efforts of the Brotherhood, it is still true) that in many thousands of instances when trainmen were seriously injured or killed in railroad operations, claim agents for the railroads have effected small and wholly inadequate settlements with such injured trainmen or the personal representatives of deceased trainmen. This they were able to do because such injured trainmen or representatives of the deceasd trainmen were unversed in the law and had no competent legal advice. Moreover, it was the practice of many railroads to discharge injured employees unless they settled their claims for injuries without suit or before making claims entirely.

8. On the other hand, it was true before the formation of the Brotherhood, has been true ever since and is still true that many lawyers abuse the confidence of their clients by

(1) Effecting low settlements in the case in order to obtain a higher settlement in some other case against the same railroad,

(2) Incompetently preparing and processing such cases upon the law or the facts,

[166]

(3) Not fully and fairly explaining to the client the terms of the employment, so that the client after having assented to settlement, finds the proceeds thereof surcharged with items for expenses of litigation, medical expense, expenses of one sort and another or the like, which are not legitimate, or if legitimate, were not explained to him before the settlement was concluded, as well as in other ways.

9. The Brotherhood of Railroad Trainmen is a labor organization not for profit. Its objects are set forth in the Preamble to the Constitution of the Brotherhood of Railroad Trainmen:

"To unite the Railroad Trainmen, Bus Employes and Dining Car Stewards, to promote their general welfare and advance their interest, social, moral, political, economic and intellectual; to protect their families by the exercise of benevolence, very needful in a calling so hazardous as ours, this fraternity has been organized.

"Persuaded that it is for the interests both of our members and their employers that a good understanding should at all times exist between the two, it will be the constant endeavor of this organization to establish mutual confidence, and create and maintain harmonious relations.

"Such are the aims and purposes of the Brotherhood of Railroad Trainmen."

Its objects are the amelioration of the condition of railroad trainmen in matters of compensation, hours, senior-

ity, pension, tenure, working conditions and safety. It is to the interest of the Brotherhood and its members that [167]

adequate compensation be recovered for every injury resulting from violation of safety appliance measures, or from other instances of negligence, not only for the sake of the injured member or the survivors of a deceased member, but because the exaction of such adequate compensation from the railroad is a strong deterrent to these violations of safety appliance measures and unsafe practices that take such a heavy toll of health, well-being and life. The exaction of adequate compensation for each injury or death due to unsafe railroad practices is to the advantage of every member of the Brotherhood, whether or not he himself is ever injured or killed.

10. Such adequate compensation cannot in general be exacted if members of the Brotherhood are either persuaded by claim agents to settle their own claims or place them in the hands of incompetent, inexperienced, or otherwise inadequate counsel.

11. In the year 1930, A. F. Whitney, President of the Brotherhood of Railroad Trainmen, said in his official annual report to the Brotherhood for that year:

> "During the course of my several years experience as an officer of the Brotherhood it has come to my attention on a number of occasions, that injured members of the organization, and the dependents of members who had been killed while engaged in railroad service, had fared rather badly at the hands of railroad claim agents in some instances, as well as at the hands of so-called ambulance chasing lawyers in other instances.

"In many cases settlements wholly inadequate in the light of the seriousness of the injuries and the responsibility of the employers had been made with

[168]

members of the Brotherhood who were either entirely devoid of any knowledge of their rights in such matters, or who had been induced to make cheap settlements by misrepresentations indulged in by those who sought to effectuate these settlements. In still other cases, attorneys had either suffered defeat in lawsuits because of their inexperience or lack of ability to properly prosecute railroad damage claims.

"In many cases attorneys had charged the injured man what happened to be highly exorbitant fees for the service rendered."

12. At the present time, there are fifteen Regional Counsel for the Brotherhood, each such Counsel representing the Brotherhood and its members with respect to the territory assigned to him. The representation assigned to each such Regional Counsel, respectively, is by railroad and not by state or geographical limits, so that a Regional Counsel may be representing the members of the Brotherhood employed by one railroad which is in geographical territory where members of the Brotherhood employed by another railroad are represented by another Regional Counsel.

13. Edward B. Henslee is both the General Counsel and one of the Regional Counsel for the Brotherhood, as Regional Counsel represents the interests of the Brotherhood and its members with respect to the following segments of the following railroads respectively: INDIANA: All railroads except Baltimore & Ohio employees in Washington, and Seymour, Indiana; except Southern Railroad Com-

pany employees in New Albany, Indiana and Princeton, Indiana; except on the Chicago, Milwaukee, St. Paul

[169]

& Pacific Railroad; OHIO: All members employed by railroads in Ohio; ILLINOIS: All railroads down to a line drawn north of Danville to Quincy, except employees of Rock Island, Chicago Great Western, Soo Line, M. & St. L; Chicago & North Western, Chicago, Milwaukee, St. Paul & Pacific, Chicago Burlington & Quincy; Atchison, Topeka & Santa Fe; PENNSYLVANIA: All railroads except Delaware, Lackawanna & Western, Lehigh Valley, Central Railroad of New Jersey, Baltimore & Ohio, D. & H., Erie, L & N E, and Reading; MICHIGAN: All employees of railroads except those which run into the upper peninsula of the state.

14. Regional Counsel in general, and Edward B. Henslee and his associates in particular, represent the Brotherhood and its members in labor relations and other matters with the railroads by whom those members are employed. Such representation includes, *inter alia*, the rendering of legal assistance in the matter of negotiating and enforcing collective bargaining agreements between the Brotherhood and its members, on the one part, and the employing railroad or railroads, on the other part, the advising of the Brotherhood and its members as to the scope, intent and effect of contracts in effect or proposed, the processing of grievances on behalf of individual members or groups of members by negotiation, arbitration or in proceedings under the Railway Labor Board under the Railway Labor Act (45 U. S. C. A., Sections 151-188, incl.), and the like. More particularly, Regional Counsel in general and Edward B. Henslee and his associates in particular, advise

upon, process, negotiate, and where necessary litigate claims with respect to rates of pay, overtime pay, seniority, working conditions and safety matters.

[170]

15. Edward B. Henslee, as General Counsel, advises the President and other Grand Lodge officers with respect to similar matters, that is, the negotiation and conclusion of contracts, the enforcement thereof, the effect, intent and operation thereof, and matters concerning rates of pay, overtime pay, seniority, grievances and safety conditions.

16. As Regional Counsel of the Brotherhood of Railroad Trainmen, Edward B. Henslee is one of legal Counsel for the Brotherhood's Legal Aid Department.

17. The organic instrument constituting the Brotherhood of Railroad Trainmen and providing for the organization of its government is the Constitution of the Brotherhood of Railroad Trainmen as amended at the twenty-eighth Convention held at Miami Beach, Florida, September 16th to November 16th, 1946, inclusive. As an addendum to Section 104 of the Constitution, it is provided as follows:

> "Under date of August 15, 1930, Special Circular No. W-32 was addressed to secretaries of all lodges of the Brotherhood in the United States, requesting that each lodge designate at least one member whose duty it would be to submit to the Legal Aid Department preliminary reports on all cases of accidental injury or death to our members on railroads. At the same time blanks were forwarded to all lodges for use in making such reports, and it was suggested that probably it would be advisable to select local chairman for this purpose, but that where the presi-

dent, secretary and treasurer, or some lay member of the lodge, was in better position to handle the reports, one of such officers or members should be selected.

[171]

"Many of our lodges and members have cooperated splendidly in getting these reports to the Legal Aid Department, but in some instances the department has not been able to render any service to injured members, or to dependents of members killed in railroad service, because of failure to receive the necessary reports. The department cannot, of course, be of the assistance intended, unless it has the cooperation of all concerned.

"Therefore, in accordance with Section 104 of the Constitution, which provides that the secretary shall conduct the correspondence of subordinate lodges, the secretaries of all lodges in the United States will accept this as official notice that it shall be their duty to report to the Legal Aid Department each case where a member of their respective lodges is accidentally injured or killed while engaged in railroad service.

'While a statement of some of the important facts in each case is desirable, a report of the name and address of the member concerned, the names and addresses of his dependents if the member was killed, the name of the railroad, the time and place of the accident, and whether injury or death occurred, is sufficient if promptly forwarded to the department. Promptness in making these reports is very essential and, therefore, they should not be delayed awaiting the development of facts other than as above stated.

"As indicated, a supply of blank forms for use in submitting these reports has previously been forwarded to all lodges in the United States. If an additional supply of such forms is required by the secretary of any lodge, they will be furnished upon request."

[172]

18. The manner and mode by which the Brotherhood effect *liaison* between such of its members injured in or incidentally to railroad operations and Legal Aid Department is as follows:

It is the duty of the Local Chairman of any Lodge of the Brotherhood to call immediately upon any member of the Lodge who has been disabled by illness or injury. If the member has been disabled by injury sustained in the course of his employment by a railroad, the Local Chairman of the Lodge regularly, normally, and as a part of his duties and obligations as such Local Chairman, informs the member: :

(1) That he is entitled to consult the Legal Aid Department, which means the Regional Counsel, free of charge, for advice as to his rights and the liability of the railroad under the Federal Employers' Liability Act (45 U.S.C.A., Sections 51-59, incl.), the Federal Boiler Inspection Act (45 U.S.C.A., Section 23), the Federal Safety Appliance and Equipment Act (45 U.S.C.A., Sections 1-16, incl.), and State Workmen's Compensation Act that may be applicable or any other pertinent law, and

(2) That if, but not unless, the member desires the Legal Aid Department to represent him in negotiations, settlement or suit, the Regional Counsel will

do so provided that the case is, in the opinion of the Regional Counsel, one within the Act. There is no requirement that any member be represented by the Legal Aid Department or by Regional Counsel, and any member is free to select any member of the Bar whom he desires as his Counsel, or to conduct his own negotiations and effect his settlement if he cares to to do so. This is true whether the member has or has

[173]

not consulted the Regional Counsel. Local Chairman ordinarily recommend that cases of injured members of the Brotherhood be handled by the Legal Aid Department.

19. The history, organization and operation of the Legal Aid Department of the Brotherhood of Railroad Trainmen is accurately described by the Brotherhood in a document entitled *The Brotherhood of Railroad Trainmen Legal Aid Department*, which document was published in the *Official Yearbook and State Meeting Program* published in the year 1953 under the auspices and by the authority of the Brotherhood. That publication was generally disseminated among members of the Brotherhood. In it members are urged to avail themselves of the services of the Legal Aid Department.

20. Petitioners further assert that the reasons, purpose and spirit of all Statutes, Rules of Law, and Canons of Ethics inhibiting the volunteering of legal services, whether the services be those of the volunteers or those of some lawyer or lawyers other than the volunteers, is to prevent persons having no actual legally cognizable interest in the subject matter of a pending or potential dispute from interfering or intermeddling in such dispute. Those Laws, Rules and Canons are not intended

to and do not inhibit persons having a genuine and legitimate interest in disputes other than a mere desire to interfere in them with or without gain from calling upon the parties to such disputes and recommending legal action, including the recommending of legal counsel. Members of an industry and their representatives have a right to advise, encourage and finance in whole or in part such legal action on the part of members or representa-

[174]

tives as will set precedents that will be of value to other members of the same industry. Trade Associations, Manufacturers' Association, Newspapers Publishers' Associations and other groups organized for the protection of members united by a common economic calling or activity regularly advise, encourage, recommend and frequently finance litigation, the result of which will, in all likelihood, influence the economic or other interests of the members.

21. In their conduct and actions in the premises, Petitioner rely in part upon the decision of the Appellate Court of Illinois in the First District in the case of *Ryan* v. *Pennsylania R.R.*, 268 Ill. App. 364, where the injured railroad man had settled directly with the railroad after notice of statutory attorney's lien, the Court saying that the railroad's defense that plaintiff's employment had been obtained by solicitation and fee splitting was "unworthy of the able lawyers who made it."

22. In their conduct and actions in the premises, Respondents rely in part upon the expression of Henry S. Drinker, Chairman of the Standing Committee on Professional Ethics and Grievances, American Bar Association, in his work, LEGAL ETHICS, published in the Legal Studies of the William Nelson Cromwell Founda-

tion and printed by Columbia University Press, New York, in 1953, on page 167 of that work, where he says:

> "It is not believed that the Canon will prevent the labor unions from finding lawyers to advise their members. The whole modern tendency is in favor of such arrangements, including particularly employer and cooperative health services, the principles of which, if applied to legal services would materially
>
> [175]
>
> lower and spread the total cost to the lower income groups. The real argument against their approval by the bar is believed to be loss of income to the lawyers and concentration of service in the hands of fewer lawyers. These features do not commend the profession to the public."

23. The Brotherhood and all of its members have a legitimate and legally cognizable interest in recovery by adjudication or settlement arising in claims out of the injuries or deaths of members in railroading, because such recoveries set precedents not only in the form of adjudications but in the patterns and customs of railway accident settlements, for recoveries in later cases.

24. Under provisions of the Federal Railway Labor Act (45 U.S.C.A., Sections 151-164, incl.), the Brotherhood of Railroad Trainmen is entitled to represent its members in the processing of grievances, either in negotiation, settlement, arbitration, administrative litigation before the Railway Labor Board, or other administrative tribunal, or judicial proceedings. Included among the types of grievances with respect to which the Brotherhood is authorized to represent its members are claims of violation of the Federal Employers' Liability Act and

the cognate statutes, either by seeking the institution of prosecutions for such violations, or, with the members' consent, by instituting litigation for recovery of damages sustained on account of such violations.

25. The Committee on Inquiry of the Chicago Bar Association has instituted before that Association's Grievance Committee, sitting as Commissioners under this Court's Rule 58, a complaint against petitioners.

[176]

26. Respondents have filed before the Commissioners their "Motion for Rule on the Complainant to File Reply or other Pleading Responsive to Respondents' Answer to Second Amended Complaint."

27. The Grievance Committee has denied the motion mentioned in the paragraph next above.

28. Petitioners are informed, believe and upon such information state the fact to be that a hearing upon the charges set forth in the above-mentioned complaint will consume from two to six years of the time of the commissioners, of the respondents in that proceeding and of counsel for the complainant.

29. If as petitioners' counsel, respondents in those proceedings are compelled to prove the matters set forth in this answer, the expense in time, effort and money will be great indeed.

30. Petitioners do not ask this Court to adjudicate upon this petition any question as to whether in any specific, particular case, petitioners' counsel or persons associated with petitioners' counsel obtained business by any means other than that above described. The charges that petitioners have obtained business by unprofessional means and the charges that petitioners' coun-

sel have been guilty of other unprofessional conduct in specific cases, all of which charges are denied, tender issues of fact that cannot be tried upon this petition and are appropriately subject to the jurisdiction of the Grievance Committee and the Board of Managers of the Chicago Bar Association as this Court's Commissioners under this Court's Rule 58.

31. But petitioners represent to this Court that the question whether petitioners may properly maintain a [177]

legal aid department, that is, attorneys whom the Brotherhood's representatives recommend to only members and survivors of deceased members and only in connection with claims for personal injuries, back pay, seniority, overtime pay, pension rights and other claims arising out of the relationship of employer and employee, the Brotherhood's representatives being reimbursed for their time, effort and expenses in the manner described in this petition, of paramount importance to the members of the Brotherhood, to the railroads and to the Bar. That question may be decided without any recourse to the specific facts of any particular case.

32. Petitioners have requested the Members of the Grievance Committee to rule upon the question presented but the Committee has expressly declined to do so.

Wherefore petitioners move and pray this Court for a declaratory judgment of an order giving directions with respect to matters within the purview of the following question:

> May the Brotherhood of railroad trainmen, a labor union whose members are engaged in intrastate and

interstate commerce, provide a staff of counsel, urge its members to avail themselves of the services of such counsel in grievances and claims arising out or railroad employment and compensate its representatives for their time, effort and expenses in recommending and urging members of the Brotherhood to avail themselves of such services?

WILLIAM C. WINES,

Room 810, 139 North Clark St.,
Chicago, Ill.
Telephone: ST 2-5925

Attorney for Petitioner.

* * * * *

(Plaintiff's Exhibit 3 Omitted in Printing.)

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN (continued)			
David Patrick, Detroit	Bruce, Parkhill, Chicago & J. F. Wilson, Detroit	$18,859	NYC
Raymond Lewis, Detroit	Peters & Kelly, Detroit	60,000	GTW
E. J. Dudzik, Detroit	E. H. Schink, Detroit	1,000	GTW
E. K. Ihlenfeldt, Detroit	"	4,000	NYC
Arnold Maciejewski, Detroit	"	4,750	GTW
J. E. Ussery, Jr., Detroit	"	12,000	NYC
Henry VanRiper, Detroit	"	(Def't Verd)	NYC
P. B. Zackery, Detroit	"	4,500	NYC
Luciano Cerda, Grand Rapids	L. W. Walsh, Grand Rapids	....	C&O
Frank Port, Detroit	Carl Weideman, Detroit	1,500	GTW
Delmar Miller, Detroit	F. K. Young, Detroit	17,500	Wab
H. L. Kelly, Michigan Center	Whitehead & Brady, Toledo	....	NYC
CASES HANDLED IN ILLINOIS			
C. L. Bollinger, Jackson	L. T. Bailey, Chicago	15,800	NYC
L. L. Trumble, Vandercook Lake	"	17,500	NYC
Matthew Stenhouse, Three Rivers	W. A. Creditt, Chicago	825	CMStP&P
W. H. Freeman, Kalamazoo	J. A. Dooley, Chicago	39,000	NYC
T. A. Allen, Lincoln Park	B. Fleischman, Chicago	325	B&O
Francis McMinn, Pontiac	Fuerst & Fuerst, Schwartberg & Barnett, Chicago	8,900	GTW
E. T. Young, Battle Creek	"	30,000	GTW
A. E. Basso, Battle Creek	B. E. Heirich, Chicago	....	GTW
D. D. Dickey, Battle Creek	"	....	GTF
J. R. Greenway, Pontiac	"	40,000	GTW
Leland Merrill, Dearborn	"	20,000	NYC
Clayton Nielsen, Lansing	"	....	GTW
D. B. Reece, Battle Creek	"	....	GTW
E. M. Schramm, Jackson	"	35,000	NYC
Dale Beisheim, Lansing	Henslee, Monek & Murray, Chicago	1,500	GTW
J. E. Benedict, Detroit	"	....	GTW
Stanley Besk, Detroit	"	....	C&O
Geo. Blackwell, Detroit	"	....	GTW
Harry Bordick, Detroit	"	....	GTW
Alexander Boyd, Battle Creek	"	....	GTW
F. C. Chidester, Port Huron	"	5,000	GTW
Russell Christenson, Grand Rapids	"	....	C&O
Joseph Clay, Battle Creek	"	....	GTW
J. L. Conaway, Pontiac	"	....	GTW
H. E. Conklin, Battle Creek	"	....	GTW
F. H. Cornett, Detroit	"	....	GTW
Gerald Corning, Detroit	"		

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS (continued)			
Lee Davis, Port Huron	Henslee, Monek & Murray, Chicago	$	GTW
J. C. DeBarr, Pontiac	"	....	GTW
Theodore DeHarde, Ferndale	"	....	GTW
Harold Dolehanty, Durand	"	42,000	GTW
H. E. Doll, Detroit	"	....	GTW
John Duncan, Detroit	"	....	GTW
Worth Eastman, Dryden	"	....	GTW
Arthur Elgee, Pontiac	"	....	GTW
Alfred Erwin, Pontiac	"	....	GTW
Wm. Ervin, Pontiac	"	....	GTW
J. F. Finn, Detroit	"	....	GTW
Wm. Harden, Rochester	"	3,250	GTW
John Hillenbrand, Detroit	"	30,000	Wab
D. J. Houk, Jackson	"	16,500	NYC
J. D. Hubble, Flint	"	....	C&O
Nicolo Lacedra, Benton Harbor	"	3,000	C&O
H. A. Leapley, Wyandotte	"	5,000	DT&I
Richard Luotonen, Detroit	"	4,300	GTW
Thomas Mero, Kalamazoo	"	5,000	GTW
Robert Morrison, Detroit	"	50,000	GTW
J. F. Murphy, Wyandotte	"	14,000	Pa
C. J. Nemcock, Allen Park	"	16,000	NYC
P. M. Noel, Grand Rapids	"	....	C&O
J. G. Richards, Battle Creek	"	4,450	GTW
(Year of settlement is not indicated in reports furnished covering the cases of Dale Beisheim through J. G. Richards, listed above.)			
1945 Settlements:			
Albert R. Baum, Springport	Henslee, Monek & Murray, Chicago	1,900	NYC
Robert H. Cox, Detroit	"	6,000	NYC
W. C. Nichols, Port Huron	"	3,250	NYC
R. A. Stahl, Detroit	"	1,250	NYC
D. C. Trine, Jackson	"	15,000	NYC
G. E. Worrell, Grand Rapids	"	9,500	NYC
1946 Settlements:			
O. H. Brewer, Kalamazoo	"	5,000	NYC
R. A. Clock, Battle Creek	"	4,000	NYC
R. W. Stephens, Detroit	"	5,000	NYC
Carlton Waite, Highland Park	"	8,000	NYC

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS (continued)			
1947 Settlements:			
A. L. August, Dearborn	Henslee, Monek & Murray, Chicago	$24,999	NYC
J. L. Bush, Dearborn	"	2,000	NYC
P. M. Cleary, Detroit	"	1,750	NYC
H. C. Frank, Jackson	"	4,000	NYC
R. E. Maher, Jackson	"	2,500	NYC
C. E. Spencer, Detroit	"	3,500	NYC
E. F. Thompson, Detroit	"	2,500	NYC
1948 Settlements:			
N. J. Molander, Northville	"	750	NYC
O. R. Pulliam, Detroit	"	7,500	NYC
1949 Settlements:			
R. F. Coady, Detroit	"	3,000	NYC
J. L. Emery, Detroit	"	5,000	NYC
O. R. Hasselberg, Detroit	"	3,500	NYC
C. J. Hyde, Detroit	"	17,500	NYC
C. R. Kahl, Farmington	"	900	NYC
Sam Plummer, Detroit	"	6,750	NYC
1950 Settlements:			
J. D. Adams, Sr., Detroit	"	10,000	NYC
R. J. Coyne, Jackson	"	1,000	NYC
Leon Graham, Lincoln Park	"	4,000	NYC
L. S. Lucas, Detroit	"	1,500	NYC
P. H. Townsend, Detroit	"	20,000	NYC
1951 Settlements:			
F. L. Cabana, Detroit	"	22.500	NYC
Edward Ebel, Bay City	"	12,500	NYC
W. W. King, Ferndale	"	13.500	NYC
R. W. Peterson, Detroit	"	55,000	NYC
F. F. Winters, Detroit	"	27,500	NYC
Tom Zambetis, Detroit	"	15,000	NYC
1952 Settlements:			
George Atherton, Dearborn	"	3,500	NYC
F. C. Brown, Detroit	"	3,500	NYC
H. M. Deppner, Detroit	"	1,250	NYC

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS (continued)			
1952 Settlements (continued):			
D. H. Farmiloe, Detroit	Henslee, Monek & Murray, Chicago	$ 6,000	Wab
V. A. Janson, Jackson	"	5,000	NYC
W. H. Main, Battle Creek	"	26,500	NYC
J. H. Marts, Jackson	"	2,000	NYC
C. A. Randolph, Detroit	"	1,500	NYC
V. V. Rickey, Detroit	"	5,000	Wab
E. E. Sharples, Kalamazoo	"	11,000	NYC
Ralph Shelton, Inkster	"	24,850	NYC
S. M. Sherman, Romulus	"	50,000	Wab
1953 Settlements:			
E. J. Bailey, Highland Park	"	9,000	NYC
K. H. Bedore, Jackson	"	6,500	NYC
R. C. Crow, Detroit	"	33,000	NYC
Hadold Dolehanty, Durand	"	42,000	GTW
Wm. Henzel, Detroit	"	7,500	NYC
H. J. Kerry, Detroit	"	8,500	NYC
L. A. Martin, Bay City	"	12,750	NYC
H. R. Pease, Kalamazoo	"	13,125	NYC
Orville Williamson, Detroit	"	600	NYC
W. M. Wilsdon, Dearborn	"	3,500	NYC
1954 Settlements:			
E. W. Beckwith, Battle Creek	"	50,000	GTW
Peter Grabowski, Bay City	"	13,500	NYC
G. J. Grant, Jackson	"	6,000	NYC
Wm. Greenaway, Birmingham	"	6,000	NYC
E. C. Ketz, Taylor Center	"	8,000	NYC
R. E. Rumfelt, Dearborn	"	7,500	NYC
R. O. Schaufele, Lincoln Park	"	8,000	NYC
G. T. Schneider, Bay City	"	6,000	NYC
F. A. Smith, Detroit	"	7,500	C&O
J. W. Swan, North Adams	"	11,000	NYC
J. E. Swanson, Jr., Detroit	"	17,500	NYC
E. T. Swiontek, Detroit	"	62,500	NYC
H. F. Tigar, Kalamazoo	"	1,750	NYC
H. H. Woodruff, Ypsilanti	"	7,500	NYC
1955 Settlements:			
W. L. Ausum, Jr., Bay City	"	3,500	NYC
Benjamin Hawkins, Detroit	"	8,000	GTW
J. P. Healy, Battle Creek	"	1,200	NYC
Kenneth Lierman, Durand	"	14,000	GTW
C. L. Miller, Bay City	"	6,500	NYC

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS (continued)			
W. W. Hicks, Monroe	L. M. Marko, Detroit	$15,000	NYC
Odie Green, Kalamazoo	Ritsos & Ritsos, Chicago	10,000	NYC
Russell Henry, Ludington	S. E. Sampliner, Cleveland	4,500	C&O
L. E. Mandenhall, Niles	Smietanka, Nowak & Garrigan, Chicago	5,000	NYC
J. W. Evans, Detroit	Zacksman, Shandorf & Rosmarin, Chicago	150	CMSTP&P
CASES HANDLED IN MINNESOTA			
E. C. Bodin, Two Harbors	Davis, Rerat, Yaeger & Lush, Minneapolis	11,500	DM&IR
M. W. Dixon, Ironwood	"	27,500	C&NW
L. M. Ferdis, Alpena	"	39,500	Grt Nor
J. M. Hendrickson, Gladstone	"	26,000	Soo
CASES HANDLED IN OHIO			
M. R. Williams, Jackson	A. H. Dudnik, Cleveland	4,190	NYC
T. E. Stewart, Pontiac	"	21,500	NYC
CASES HANDLED IN PENNSYLVANIA			
E. W. Clark, Detroit	Meyer, Lasch, Hankin & Poul, Philadelphia	9,500	P&LE
Mary R. Kotlowski, Jackson	"	11,000	NYC

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	38	$ 371,720
Cases handled by Henslee firm	126	1,191,064
Cases handled by other attorneys	33	503,349
Totals	197	$2,066,133

[282]

PLAINTIFF'S EXHIBIT 4

SETTLEMENTS IN

F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO MARCH 31, 1955

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
Arnold McGhee, Detroit	Dann & Rosenbaum, Detroit	$	C&O
R. T. Heffernan, Hillsdale	A. D. Dudnik, Cleveland	49,500	NYC
B. C. West, Detroit	S. C. Downes, Detroit	....	NYC
M. W. Bernecker, Bay City	Fuerst & Fuerst, Chicago	....	C&O
Benj. Earnest, Saginaw	"	....	C&O
L. F. Hogg, Pontiac	"	10,000	GTW
R. J. Smith, Fosters	"	17,500	C&O
Joseph Bak, Detroit	E. Groefsema, Detroit	....	NYC
N. J. Wilyard, Detroit	F. M. M. Hally, Detroit	18,500	NYC
J. Rogoszewski, Saginaw	Heilman & Purcell, Saginaw	....	C&O
R. F. Baker, Detroit	Henslee, Monek & Murray, Chicago	3,750	C&O
J. D. McBee, Detroit	"	....	C&O
Harry Bassett, Wayne	"	8,500	NYC
B. G. Couch, Detroit	"	20,240	NYC
H. C. Frank, Jackson	"	9,500	NYC
W. H. Leslie, Jackson	"	40,000	NYC
Fred Wohlgemuth, Detroit	"	5,000	NYC
R. F. Wolfe, Munith	"	6,000	NYC
Alexander Borkowski, Dearborn	"	17,000	NYC
F. E. Miller, Detroit	"	20,000	C&O
H. L. Murphy, Saginaw	"	2,000	C&O
D. T. Russell, Kalamazoo	"	8,500	NYC
C. R. Busha, Flint, Mich.	R. J. MacDonald, Flint	5,100	C&O
R. W. Irving, Jackson	Marcus, Kleman, etc., Detroit	29,800	NYC
J. I. Green, Jackson	"	24,000	NYC
Harry King, Detroit	"	5,000	NYC
Victoria Zdun, Detroit	"	6,000	NYC
C. M. Brown, Jackson	"	26,000	NYC
F. DeBiasi, Jackson	"	1,350	NYC
John Kielar, Jackson	"	9,000	NYC
R. E. Naas, Detroit	"	3,500	NYC
Monroe Harrison, Detroit	"	3,100	NYC
Harry Oosterhart, Muskegon	Marcus & McCroskey, Muskegon	(Dismissed)	C&O
L. J. Babcock, Jackson	L. M. Marko, Detroit	2,500	NYC
Michael Blaszkowski, Wayne	"	12,500	NYC
W. J. Brieger, Jackson	"	3,000	NYC
G. C. Dunn, Port Huron	"	19,000	GTW
K. G. Little, Detroit	"	10,000	NYC
H. P. Martin, Durand	"	4,795	GTW
F. J. Ronan, Port Huron	"	825	GTW
L. W. Scheffler, Port Huron	"	50,000	GTW
R. H. Steele, Birch Run	"	1,500	GTW
Erwin Foshag, Monroe	V. D. Martin, Detroit	....	NYC
D. H. Hornberger, Jr., Detroit	H. J. Meurer, Detroit	16,000	NYC
R. W. Irving, Jackson	Meyer, Lasch, Hankin & Poul, Philadelphia, and J. W. Kelman, Detroit	29,800	NYC

[308]

PLAINTIFF'S EXHIBIT 6

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD APRIL 1, 1955 TO DECEMBER 31, 1955

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
F. S. Londo, Detroit	Cary & BeGole, Detroit	$ 4,000	NYC
Nick Baca, Detroit	Carl Gussin, Detroit	1,250	GTW
F. J. Blondin, Carrollton	Henslee, Monek & Murray, Chicago	15,000	NYC
R. W. Cagle, Detroit	"	22,500	C&O
J. L. Cramer, Bay City	"	30,000	NYC
Samuel Gentelia, Mt. Elliott (Detroit)	"	25,000	NYC
J. W. Gollick, Dearborn	"	5,500	NYC
N. B. Long, Jackson	"	6,500	NYC
W. F. Nael, Detroit	"	15,000	NYC
D. C. Pero, Bay City	"	6,490	NYC
J. L. Smith, River Rouge	"	21,500	C&O
H. B. T. Hocking, Detroit	Marcus, Kelman, etc., Detroit	3,500	GTW
L. E. McFall, Battle Creek	Markle, Markle & Urbank, Detroit	14,000	NYC
R. E. Pinkerton, Hillsdale	L. M. Marko, Detroit	9,500	NYC
G. E. Richards, Saginaw	"	5,000	C&O
Leroy Steagall, Inkster	"	100	B&O
D. G. Garrett, Detroit	B. Parkhill, Chicago & J. F. Wilson, Detroit	2,500	NYC
R. J. Clancy, Detroit	D. Rosen & J. A. Markle, Detroit	6,000	Pa
W. A. Dearing, Detroit	E. H. Schink, Detroit	15,000	NYC
Albert Neely, Detroit	"	16,500	GTW
V. H. Woodrough, Mason	"	2,000	NYC
E. W. Sahr, Monroe	Cameron Buchanan, Detroit	10,000	C&O
CASES HANDLED IN ILLINOIS			
Edward Bransberger, Holland	J. A. Dooley, Chicago	25,000	Pa
R. F. Bauschka, Detroit	Henslee, Monek & Murray, Chicago	3,000	NYC
J. D. Bedwell, Pontiac	"	18,300	GTW
O. F. Brown, Bay City	"	7,500	NYC
W. H. Cohenour, Carleton	"	5,000	DT&I
V. A. Johnson, Jackson	"	800	NYC
C. A. Koch, Detroit	"	9,900	NYC
J. D. McKenzie, Detroit	"	25,000	NYC
W. L. Peacock, Detroit	"	885	NYC
O. A. Running, Battle Creek	"	17,750	GTW
Arnold Shumaker, Flat Rock	"	5,000	DT&I
H. M. Velasquez, Detroit	"	2,000	GTW
R. J. Welch, Jackson	"	2,000	NYC
Orville Williamson, Detroit	"	5,000	NYC
S. J. Riley, Kalkaska	S. Sacks & L. G. Davidson, Chicago	12,000	GTW
CASE HANDLED IN MINNESOTA			
G. A. Rivest, Gladstone	Davis, Rerat, Yaeger & Lush, Minneapolis	11,900	Soo

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD APRIL 1, 1955 TO DECEMBER 31, 1955 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN PENNSYLVANIA			
O. E. Miller, Detroit	Meyer, Lasch, Hankin & Poul, Philadelphia	$ 3,500	B&O
L. S. Wilde, Detroit	"	3,000	NYC

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	12	$ 86,850
Cases handled by Henslee firm	22	249,625
Cases handled by other attorneys	6	57,900
Totals	40	$394,375

(Plaintiff's Exhibit 7 Omitted in Printing.)

[326]

PLAINTIFF'S EXHIBIT 8

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1956 TO DECEMBER 31, 1956

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
K. M. Saylor, Adm. Pete Manni, Dec'd, Pontiac	M. L. Bacow, Pontiac	$15,000	GTW
Jos. McDaniel, Monroe	Golden & Merman, Monroe	2,500	NYC
B. L. Anderson, Grand Rapids	Henslee, Monek & Murray, Chicago	6,250	NYC
E. J. Hanley, Detroit	"	25,000	NYC
V. A. Holbrook, Detroit	"	9,500	NYC
John Kingham, Saginaw	"	16,000	C&O
E. M. Myers, Jackson	"	15,000	NYC
J. F. Galombeski, Grand Rapids	Linsey, Shivel, etc., Grand Rapids	750	C&O
B. F. Chase, Detroit	A. C. Lumley, Detroit	1,000	NYC
H. H. Albright, Monroe	L. M. Marko, Detroit	1,200	NYC
R. K. Alexander, Detroit	"	400	NYC
C. D. Bennett, Manton	"	7,500	NYC
C. H. Moreland, Detroit	"	125	NYC
H. E. Reed, E. Detroit	"	6,000	NYC
Clark Avery, Dearborn	Porritt, Freud, etc., Detroit	(Dismissed)	D&TSL
J. P. Bommarito, Detroit	Fred Potvin, Detroit	9,000	NYC
P. P. Patterfritz, Monroe	F. T. Ready, Monroe	30,000	NYC
C. L. Hammock, Jackson	E. H. Schink, Detroit	4,000	NYC
Ronald McDonald, Battle Creek	Frank Sibley, Detroit	750	C&O
CASES HANDLED IN ILLINOIS			
L. R. Spaulding, Two Rivers	Bernard Fleischman, Chicago	2,000	CMStP&P
C. J. Landmesser, Detroit	Heirich & Hickey, Chicago	3,750	NYC
C. M. Brown, Lansing	Henslee, Monek & Murray, Chicago	7,500	GTW
A. J. Delucia, Kalamazoo	"	2,000	NYC
S. L. Doody, Detroit	"	6,500	NYC
D. L. Graham, Jackson	"	1,200	NYC
J. W. Greer, Detroit	"	15,000	GTW
John Klask, Detroit	"	8,000	NYC
Lawrence LaFeve, Detroit	"	13,500	Union Belt Detroit
Dewey Pollock, Niles	"	3,500	NYC
L. J. Syson, Niles	"	15,000	NYC
CASE HANDLED IN INDIANA			
R. A. Gagne, Niles	Henslee, Monek & Murray, Chicago	18,750	NYC
CASES HANDLED IN PENNSYLVANIA			
B. M. Vesey, Ottawa Kale	Meyer, Lasch, Hankin & Poul, Philadelphia	6,000	NYC

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1956 TO DECEMBER 31, 1956 (continued)

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	14	$ 78,225
Cases handled by Henslee firm	15	162,700
Cases handled by other attorneys	3	11,750
Totals	32	$252,675

* * *

[362]

PLAINTIFF'S EXHIBIT 10

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1957 TO DECEMBER 31, 1957

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
J. M. Giftopoulis, Jackson	C. E. Baker, Detroit	$ 1,000	NYC
Nicola Guerra, Detroit	Bernstein & Bernstein, Detroit	4,500	Wab
B. A. Ritter, Lansing	D. Rathbun, Lansing & Carl Davidson, Detroit	24,000	GTW
F. W. Haneberg, Dearborn	Henslee, Monek & Murray, Chicago	20,000	NYC
H. L. Brenner, Battle Creek	Kelly & Kelly, Jackson	(Dismissed)	GTW
Sam Collins, Jackson	Kelly, Kelly & Kelly, Jackson	1,250	NYC
Jas. L. Mull, Detroit	L. E. Kozlow, Detroit	10,000	B&O
Monroe Harrison, Detroit	Marcus, Kelman, etc., Detroit	1,750	NYC
Warden Herman, Jackson	Markle & Rosenburg, Detroit	2,500	NYC
Richard Bellenbaum, Saginaw	L. M. Marko, Detroit	13,000	C&O
T. W. Christie, Oak Park	"	500	NYC
J. E. Espy, Dec., Battle Creek	"	3,500	GTW
D. H. Gingrich, Port Huron	"	2,250	GTW
R. E. Grubba, Roseville	"	3,000	NYC
Frank Haslego, Detroit	"	110	NYC
R. T. Host, Grand Rapids	"	7,000	C&O
L. A. LaFontaine, Royal Oak	"	7,500	NYC
Kenneth McCobb, Detroit	"	72,500	NYC
H. J. McLaughlin, Detroit	"	1,550	NYC
J. C. Meade, Detroit	"	12,500	DT&I
J. F. Meyer, Ecorse	"	1,000	NYC
R. S. Parent, Detroit	"	4,000	NYC
R. J. Rebant, Detroit	"	2,100	NYC
C. J. Turner, Detroit	"	75,000	Wab
Wm. Nagel, Bay City	John Purcell, Saginaw	65,000	NYC
Elbert Harris, Jackson	Haskell Nichols, Jackson	800	NYC
Walter Ewald, Detroit	E. H. Schink, Detroit	4,000	NYC
G. W. Farrington, Detroit	"	9,500	GTW
H. W. Hays, Bath	"	10,000	NYC
B. P. Leonards, Detroit	"	22,300	C&O
F. C. Murray, Detroit	"	3,500	GTW
J. P. Pondo, Detroit	"	28,500	GTW
H. R. Rouse, Detroit	"	1,500	NYC
Frank Calandrino, Grand Rapids	A. J. Selburn, Detroit	15,000	C&O
A. C. Hall, Detroit	Earl I. Sherman, Detroit	25,000	Wab
C. E. Martin, Clarkston	F. C. Sibley, Detroit	1,600	GTW
E. J. Zielinski, Detroit	Zwerdling, Zwerdling, etc., Detroit	35,000	NYC

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1957 TO DECEMBER 31, 1957 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS			
W. J. Beer, Detroit	B. E. Heirich, Chicago	$30,000	GTW
W. P. Bilokury, Inkster	Heirich & Hickey, Chicago	2,375	NYC
J. R. Abercrombie, Jr., Carleton	Henslee, Monek & Murray, Chicago	750	DT&I
R. J. Arthur, Jackson	"	2,000	NYC
F. J. Berger, Detroit	"	20,255	GTW
R. G. Brown, Lowell	"	15,000	NYC
C. G. Cowan, Lansing	"	5,000	NYC
L. B. Dohse, Niles	"	17,500	NYC
H. C. Gayton, Harper Woods	"	3,200	GTW
L. A. Gill, Royal Oak	"	10,000	NYC
R. W. Gregory, Inkster	"	50,000	NYC
R. F. Lowe, River Rouge	"	7,000	NYC
J. A. Lustig, Inkster	"	3,500	NYC
J. M. Markiewicz, Dearborn	"	7,350	NYC
C. L. Marx, Jackson	"	35,000	NYC
L. R. Selby, Battle Creek	"	(Dismissed)	GTW
J. A. Sheridan, Detroit	"	3,500	NYC
C. S. Slater, Dearborn	"	18,000	DT&I
R. L. Smith, Niles	"	19,500	NYC
Michael Spelich, Niles	"	22,500	B&O
V. H. Steele, Niles	"	1,750	NYC
Harry Van Wagner, Jackson	"	1,500	NYC
Arthur Zink, Port Huron	"	20,000	GTW
J. A. Prestine, Niles	Metzenbaum, Schwartz & Disbro, Cleveland & L. S. Karlin, Chicago	6,979	NYC
Spencer Cook, Detroit	Smith & Munson, Chicago	900	Wab
CASE HANDLED IN INDIANA			
Floyd Brown, Flint	Justin Waitkus, Gary	(Def't)	B&O
CASE HANDLED IN MINNESOTA			
L. N. Mattonen, Escanaba	Davis, Rerat, Yaeger & Lush Minneapolis	15,000	C&NW
CASES HANDLED IN OHIO			
E. C. Duty, Monroe	Harrison, Spangenberg & Hull. Cleveland	7,000	NYC
Z. Newman, Jr., Ludington	J. H. Traverse, Cleveland	60,000	C&O
CASES HANDLED IN PENNSYLVANIA			
Charley Carr, Detroit	Meyer, Lasch, etc., Philadelphia	3,000	NYC
L. A. White, Jackson	"	8,500	NYC

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1957 TO DECEMBER 31, 1957 (continued)

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	36	$472,210
Cases handled by Henslee firm	22	283,305
Cases handled by other attorneys	10	133,754
Totals	68	$889,269

(Plaintiff's Exhibit 11 Omitted in Printing.)

[391]

PLAINTIFF'S EXHIBIT 12

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1958 TO DECEMBER 31, 1958

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
L. R. Burch, Detroit	Bernstein & Bernstein, Detroit	$ 1,393	C&O
C. D. Loucks, Jackson	G. R. Campbell, Jackson	12,500	NYC
D. J. Clift, Battle Creek	R. W. Conroy, Battle Creek	1,800	GTW
Lonnie Nance, Baldwin	W. A. George, Baldwin	500	C&O
W. H. Deford, Saginaw	Heilman & Purcell, Saginaw	16,000	C&O
J. R. Draper, Detroit	Marcus, Kelman, etc., Detroit	(Dismissed)	NYC
M. M. Brown, Dearborn	L. M. Marko, Detroit	10,000	NYC
R. E. Chubb, Ypsilanti	"	12,500	NYC
L. A. Gouine, Warren	"	750	NYC
E. J. Kroll, Wyandotte	"	7,490	NYC
Kenneth McCobb, Detroit	"	72,500	NYC
R. J. Rebant, Detroit	"	500	NYC
R. E. Rebant, Detroit	"	1,500	NYC
E. J. Riley, Ann Arbor	"	2,475	NYC
M. M. Riskey, Traverse City	"	8,000	C&O
M. M. White, Bay City	"	2,000	NYC
Welby Erskine, Jr., Saginaw	Martin & Martin, Saginaw	35,000	AT&SF
Stanley Isadore, Detroit	Rapaport, Siegrist & Maitech, Detroit	7,500	GTW
R. B. Foust Jr., Lansing	E. H. Schink, Detroit	1,500	NYC
G. V. Mackey, Detroit	"	2,750	NYC
E. H. Morris, Detroit	"	10,000	NYC
W. H. Raines, Detroit	"	6,000	GTW
G. E. Rockeman, Detroit	"	4,500	NYC
H. L. Sonerant, Detroit	"	5,500	NYC
D. J. Trombley, Armada	"	1,000	NYC
D. J. Trombley, Armada	"	7,500	NYC
D. R. Williams, Detroit	"	8,000	NYC
R. J. Wilson, Detroit	"	6,000	GTW
CASES HANDLED IN ILLINOIS			
J. S. Kline, Saginaw	L. G. Davidson, Chicago	40,000	C&O
M. G. Huntington, Mendon	J. A. Dooley, Chicago & E. J. Ryan, Kalamazoo	500	NYC
Clayton Bryant, Monroe	B. E. Heirich, Chicago	35,000	NYC
W. W. Trommer, Detroit	"	10,000	NYC
W. W. Trommer, Detroit	"	6,000	NYC
E. D. Brown, Detroit	Henslee, Monek & Murray, Chicago	22,000	NYC
Irving Dobson, Ferndale	"	(Def't)	GTW
C. J. Draggoo, Osseo	"	16,000	NYC
Willard Durham, Battle Creek	"	5,000	NYC
J. A. Montagano, Detroit	"	1,600	NYC
A. M. Sumkowski, Jackson	"	1,350	NYC
R. E. Joseph, Horton	"	1,500	NYC

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1958 TO DECEMBER 31, 1958 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASE HANDLED IN INDIANA			
Floyd Brown, Flint	Justin Waitkus, Gary	(Def't)	B&O
CASES HANDLED IN MINNESOTA			
L. B. Vesel, Engadine	Vennum. Newhall & Goetz, Mpls.	$ 4,000	Soo
H. L. Houle, Menominee	Yaeger, Austin & Chapman, Mpls.	22,600	C&NW
H. A. Lehman, Menominee	"	47,500	CMStP&P
CASE HANDLED IN NEW YORK			
Jasper Bright, Dowagiac	Delson, Levin & Gordon, N.Y. City	2,250	NYC
CASES HANDLED IN OHIO			
E. M. Cool, Tecumseh	Brady, Whitehead & Simmons, Toledo	4,875	B&O
R. G. Young, Temperance	C. H. Brady, Toledo	5,000	D&TSL
G. S. Anson, Monroe	Cubbin & Rice, Toledo	825	D&TSL
B. A. Rice, Detroit	Dombey, Tyler, Richards & Grieser, Columbus	16,500	Pa
CASES HANDLED IN PENNSYLVANIA			
D. C. Bass, Jackson	Meyer, Lasch, Hankin & Poul, Phila.	4,500	NYC
F. W. Slighly, Grass Lake	"	10,000	NYC
Paul L. Young, Niles	"	17,500	NYC

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	28	$255,158
Cases handled by Henslee firm	7	117,450
Cases handled by other attorneys	17	227,050
Totals	52	$599,658

(Plaintiff's Exhibit 13 Omitted in Printing.)

[424]

PLAINTIFF'S EXHIBIT 14

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1959 TO DECEMBER 31, 1959

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
W. D. Boudro, Durand	Cincinnelli & Brisbois, Saginaw	$25,000	GTW
Joseph Cachia, Detroit	M. A. Guest, Detroit	3,510	NYC
Dewey Franks, Detroit	V. G. Hanson, Detroit	1,000	GTW
Lester McGuire, Detroit	Marcus, Kelman, etc., Detroit	3,250	NYC
L. O. Sink, Battle Creek	J. A. Markle, Detroit and J. M. Allen, Battle Creek	13,000	GTW
W. F. Berjski, Detroit	L. M. Marko, Detroit	12.500	NYC
W. P. Bilokury, Inkster	"	17,500	NYC
W. E. Elliott, Saginaw	"	2,500	C&O
C. D. Hensley, Detroit	"	500	GTW
R. F. Kall, East Detroit	"	1,550	NYC
Henry Kosmala, Van Dyke	"	3,500	NYC
Peter Molter, G. P. Woods	"	5,000	NYC
B. A. Nickerson, Allen Park	"	1,750	NYC
J. K. Stringer, Trenton	"	250	NYC
S. J. Drake, Sr., Detroit	McDonald & Kane, Detroit	4,750	NYC
Gerritt Hoffman, Saginaw	John Purcell, Saginaw	30,000	C&O
E. E. King, Saginaw	"	7,500	GTW
N. H. Murray, Saginaw	"	(Def't)	C&O
Chas. Norrick, Detroit	T. J. Rafferty & Alexander Cholette, etc., Detroit	48,500	C&O
Aaron Johnson, Detroit	Rothe, Marston, etc., Detroit	21,100	NYC
T. D. Naughton, Dearborn	F. T. Schermerhorn, Detroit	580	NYC
Thos. Alderman, Jr., Detroit	E. H. Schink, Detroit	10,000	NYC
Thos. Alderman, Jr., Detroit	"	3,500	NYC
L. C. Anderson, Van Dyke	"	3,600	GTW
P. M. Arrieta, Stockbridge	"	2,000	NYC
P. M. Arrieta, Stockbridge	"	2,000	NYC
P. H. Jackson, Detroit	"	13,500	NYC
C. R. Langzell, Detroit	"	(Dismissed)	GTW
Albert Salinger, Detroit	"	1,600	NYC
Emil Tkaczuk, Detroit	"	300	GTW
F. L. Wilson, Madison Heights	"	25,000	GTW
A. E. McClure, Marne	Abel, Selburn, Detroit & B. E. Heirich, Chicago	5,000	C&O
CASES HANDLED IN ILLINOIS			
J. B. Nichols, Jr., Detroit	Epstein, Wilsey & Kirsh, Chicago	200	NYC
T. L. Adams, Lansing	Henslee & Henslee, Chicago	6,700	NYC
W. E. Bray, Livonia	"	16,000	C&O
A. W. Broome, Detroit	"	5,000	Wab
R. S. Guilfoil, Jackson	"	8,000	NYC
R. L. Henning, Niles	"	30,000	NYC

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1959 TO DECEMBER 31, 1959 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN ILLINOIS (continued)			
C. R. Hornbeck, Gibraltar	Henslee, Monek & Murray, Chicago	$50,000	DT&I
Delbert Keith, Saginaw	"	4,200	C&O
Irving C. Lucas, Flint	"	2,500	C&O
D. A. McDonald, Detroit	"	30,000	Wab
G. F. Mueller, Pontiac	"	3,750	GTW
D. G. Patty, Vandercook Lake	"	1,500	NYC
J. P. Persak, Grand Rapids	"	15,400	Pa
J. F. Smith, Drayton Plains	"	275	GTW
Leslie Smith, Battle Creek	"	27,000	GTW
Leslie Smith, Battle Creek	"	500	GTW
J. W. Staley, Flint	"	20,000	GTW
R. E. Winebrenner, Edwardsburg	"	8,500	NYC
John Tracey, Detroit	"	12,000	NYC
E. H. Wandrey, Niles	"	5,000	NYC
E. H. Wandrey, Niles	"	5,000	NYC
W. F. Copper, Jackson	E. H. Schink, Detroit	17,500	NYC
CASES HANDLED IN MINNESOTA			
J. R. Flannery, Gladstone	Rerat & Brady, Minneapolis	16,300	Soo
L. K. Baillargeon, Escanaba	Yaeger, Austin & Chapman, Mpls.	14,500	C&NW
CASES HANDLED IN OHIO			
Carl Blank, LaSalle	Brady & Simmons, Toledo	2,175	D&TSL
J. A. Roberts, Monroe	C. H. Brady, Toledo	50,000	D&TSL
J. D. Scott, Osseo	Metzenbaum & Schwartz, Clev.	5,000	NYC&StL

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	32	$282,240
Cases handled by Henslee firm	20	251,325
Cases handled by other attorneys	7	93,175
Total	**59**	**$626,740**

(Plaintiff's Exhibit 15 Omitted in Printing.)

[~~443~~]

PLAINTIFF'S EXHIBIT 16

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1960 TO DECEMBER 31, 1960

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
CASES HANDLED IN MICHIGAN			
R. J. Turner, Detroit	J. R. Bacalis, Detroit	$ 1,000	Wab
C. O. Gable, Battle Creek	Russell Conroy, Battle Creek & M. E. LeSueur, Chicago	44,000	NYC
R. G. Faulhaber, Southgate	Goodman, Crockett, etc., Detroit	5,300	C&O
Frank Bradford, Flint	Benzion, Gotlib, Flint	(Dismissed)	GTW
E. L. Murphy, Lincoln Park	Kelly, Kelly & Kelly, Jackson	22,500	Wab
Emmett Gatson, Detroit	Lampert, Fried & Kanner, Detroit	2,500	NYC
Richard Acton	L. M. Marko and Goodman, Crockett, Eden & Robb, Detroit	99,500	C&O
D. M. Blake, Ferndale	L. M. Marko, Detroit	400	NYC
J. E. Boyd, Detroit	"	1,600	NYC
W. T. Brafford, Rockwood	"	23,000	DT&I
Zigmund Danielak, Detroit	"	13,000	NYC
W. E. DeWitt, Traverse City	"	12,000	C&O
A. J. Gilleran, Detroit	"	12,500	NYC
W. M. Henry, Port Huron	"	2,500	GTW
L. S. Lucas, Detroit	"	2,750	NYC
H. C. Seden, Northville	"	750	NYC
F. K. Szostak, Detroit	"	185	NYC
R. B. Delgado, Dearborn	Menendez & LaPlata, Detroit	1,000	NYC
Arnold Smith, Highland Park	E. H. Schink, Detroit	420	NYC
Eddie McGhee, Grand Rapids	Williams & Damon, Grand Rapids	1,500	C&O
E. L. Peale, Maybee	Williamson & Williamson, Monroe	16,725	Wab
CASES HANDLED IN ILLINOIS			
D. J. Demeuse, Escanaba	N. Chapekis, Escanaba and M. H. Lyons, Chicago	28,500	C&NW
C. W. Thomas, Goodells	B. E. Heirich, Chicago	20,000	GTW
J. L. Young, Port Huron	B. E. Heirich, Chicago	16,500	GTW
R. A. Barnett, Pontiac	Henslee & Henslee, Chicago	1,000	GTW
P. W. Bauner, Niles	"	47,000	NYC
J. W. Clark, Lansing	"	2,500	NYC
Joe Esra, Oak Park	"	2,000	GTW
H. K. Stoddard, Michigan Center	"	35,000	NYC
A. F. Taylor, Lansing	"	9,500	NYC
M. V. Worden, Grand Rapids	Parlin & Karlin, Chicago	25,000	Pa
CASES HANDLED IN MINNESOTA			
R. C. Ziem, Ironwood	Yaeger & Yaeger, Minneapolis	7,500	C&NW

SETTLEMENTS IN
F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JANUARY 1, 1960 TO DECEMBER 31, 1960 (continued)

Plaintiff or Claimant	Attorney	Amount Paid	Railroad
	CASE HANDLED IN OHIO		
E. A. Thompson, Niles	Dworken & Dworken, Cleveland	$49,000	NYC
	CASE HANDLED IN PENNSYLVANIA		
Callie McBride, Detroit	Meyer, Lasch, Hankin & Poul, Philadelphia	22,000	NYC

SUMMARY

	Number	Amount
Cases handled by Michigan attorneys	20	$219,130
Cases handled by Henslee firm	6	97,000
Cases handled by other attorneys	8	[illegible]500
Total	34	[illegible]630

PLAINTIFF'S EXHIBIT 17

SETTLEMENTS IN F.E.L.A. CASES INVOLVING MICHIGAN RESIDENTS REPORTED TO CLAIMS RESEARCH BUREAU DURING THE PERIOD JULY 1, 1953 TO TO DECEMBER 31, 1960

Reporting Period	Cases Handled by: Michigan Attorneys Number	Michigan Attorneys Amount	Henslee Firm Number	Henslee Firm Amount	Other Attorneys Number	Other Attorneys Amount	TOTAL Number	TOTAL Amount
July 1, 1953 to March 31, 1955	38	$ 371,720	126	$1,191,064	33	$ 503,349	197	$2,066,133
April 1, 1955 to Dec. 31, 1955	12	86,850	22	249,625	6	57,900	40	394,375
Year 1956	14	78,225	15	162,700	3	11,750	32	252,675
Year 1957	36	472,210	22	283,305	10	133,754	68	889,269
Year 1958	28	255,158	7	117,450	17	227,050	52	599,658
Year 1959	32	282,240	20	251,325	7	93,175	59	626,740
Year 1960	20	219,130	6	97,000	8	212,500	34	528,630
	180	$1,765,533	218	$2,352,469	84	$1,239,478	482	$5,357,480

[446]

PLAINTIFF'S EXHIBIT 19

DIRECTORY

of the

GRAND LODGE and
SUBORDINATE LODGES

of the

BROTHERHOOD OF RAILROAD
TRAINMEN

JANUARY, 1959

ISSUED JANUARY, APRIL, JULY AND OCTOBER

MICHIGAN

Location and Number of Lodges

Alpena	568	Gladstone	103
Battle Creek	265	Grand Rapids	180
Battle Creek	782	Grand Rapids	1,070
Bay City	147	Ironwood	638
Detroit	149	Jackson	121
Detroit	269	Kalamazoo	1,027
Detroit	454	Lansing	1,078
Detroit	555	Ludington	1,064
Detroit	636	Marquette	10
Detroit	749	Marquette	612
Detroit	1,067	New Buffalo	1,071
Durand	784	Niles	262
Erie	1,068	Niles	1,012
Escanaba	182	Owosso	786
Escanaba	1,098	Pontiac	1,033
Flat Rock	716	Port Huron	241
Flint	1,048	Saginaw	188
Flint	1,066	Saginaw	1,065

[448]

IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE STATE BAR OF MICHIGAN,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN,

No. T—640

REMITTITUR FROM SUPREME COURT
TO LOWER COURT

(Filed January 22, 1965)

(State of Michigan—Supreme Court)

Before: The Entire Bench; Black, J.

Plaintiff's bill was filed January 28, 1959, in the Jackson circuit. It was designed to obtain relief corresponding to that which was sought about the same time by the Virginia State Bar, against the same defendant Brotherhood, in the Chancery Court of Richmond, Virginia. For the history of the Virginia Case, and for understanding of its ultimately controlling effect here, we refer to *Brotherhood of Railroad Trainmen v. Virginia* ex rel. Virginia State Bar, ... US ...., 12 L ed 2d 89, 84 S Ct ...., decided April 20, 1964.

The Jackson County Circuit Court ruled in favor of the plaintiff State Bar, finding as applicable certain then unreversed and apparently controlling Lower Court decisions. The Circuit Court concluded:

> "This same matter has been before the Courts of the states of Illinois, Iowa, Oklahoma, Virginia, Nebraska, and Missouri. The majority of these states,

in one form or another, have approved the decisions of the Illinois Supreme Court, Missouri being the only state to prohibit it, and the State of Virginia prohibiting recommendation of any particular counsel*

[449]

"This Court feels that the plaintiff is entitled to relief."

Decree below, entered under date of September 14, 1962, enjoining the defendants in much the same manner as was done by the Chancery Court of Richmond. The defendants having appealed from such decree, and it appearing that submission to the Supreme Court of the Virginia Case was then imminent, ordered entered here January 2, 1964, as follows:

"On reading and filing appellants' December 26 motion for continuance, and upon consideration of the summary appearing in 32 LW 3006 pertaining to like questions that are due for January argument in the case identified below;

"It is ordered that submission of this cause on appeal be and the same is hereby continued pending final determination, by the Supreme Court of the United States, of the case of Railroad Trainmen v. Virginia State Bar, Docket 34, certiorari granted 9 L ed 2d No. 7, p 715.

"It is further ordered that appellants' motion for certification of this cause, to the Supreme Court, be and the same is denied."

---

* The Virginia Case, to which the circuit court referred, was of course the decision which per foregoing citation was reviewed and reversed by the Supreme Court.

Now that the Supreme Court has decided the Virginia Case, we find no alternative other than that of reversal and remand, as in the Virginia Case, for proceedings in the Jackson circuit not inconsistent with the Supreme Court's said opinion. It is so ordered, with no award of costs as to either court.

Since a public question of moment is involved, we remand with permission for amendment of plaintiff's bill to seek, if it be so advised, relief not inconsistent with the Supreme Court's said opinion.

[450]

IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE STATE BAR OF MICHIGAN,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN,

No. T—640

MOTION FOR FURTHER PROCEEDINGS IN CIRCUIT COURT ON REMAND FROM SUPREME COURT OF THE STATE OF MICHIGAN

(Circuit Court For The County of Jackson)

(Filed January 20, 1965)

Now come the attorneys for the State Bar of Michigan, Plaintiff, and show unto the Court as follows:

1. That an opinion has been entered in the Supreme Court of the State of Michigan, on appeal of the above matter from the decree of the Circuit Court for the County

of Jackson, in which Supreme Court opinion, the Supreme Court has reversed the decree of the Circuit Court for the County of Jackson and remanded the case for further proceedings in the Circuit Court for the County of Jackson.

Wherefore, the State Bar of Michaigan, Plaintiff, by its attorneys prays that further proceedings in this cause be noticed in accordance with said remand.

State Bar of Michigan,

/s/ J. Cameron Halls,
Phillip C. Kelly,

Counsel for State Bar of Michigan
1323 Dime Building,
Detroit, Michigan 48226.
(313) 961-4167
210 W. Franklin St.,
Jackson, Michigan.
(517) 782-7174

[451] (Jurat omitted in printing)

* * * * *

[458]

OPINION AND ORDER

(Filed May 24, 1968)

(Circuit Court For The County of Jackson)

Pursuant to the directive of the Supreme Court of this state in the case of *State Bar of Michigan v. Brotherhood of Railroad Trainmen,* 374 Michigan, 152, 155, this matter was noticed for hearing before this Court for entry of an order not inconsistent with the United States Supreme Court opinion in *Railroad Trainmen v. Virginia Bar,* 377 U. S. 1, 12 L ed 2d, 89.

Motion for judgment in accordance with the foregoing was argued before this Court by both counsel on May 17, 1968.

Subsequent to entry of the United States Supreme Court decision aforesaid, this matter once again came before the Supreme Court of the State of Virginia on June 13, 1966, (rehearing denied September 14, 1966) and upon which case certiorari to the United States Supreme Court has also been denied, wherein the said Supreme Court of the State of Virginia made its determination of what would be a proper order under the mandate of the United States Supreme Court. **

Upon argument before the Court, considerable stress was laid upon the holding of the United States Supreme Court in *United Mine Workers v. Illinois Bar Association*, 19 L ed 2d, 426, wherein it was held that the First and Fourteenth Amendments gave the mine workers the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights.

[459]

As pointed out in the footnotes on page 428, the opinion and holding was limited to this one aspect of the union's activities.

It must also be kept in mind that the same general principle; that is, actual payment of the attorneys by the association involved, had been before the United States Supreme Court in the case of *NAACP v. Button*, 371 U. S., 415, 9 L ed 2d, 405.

There is nothing in the *United Mine Workers Case* which would permit or change entry of the proposed order which is in conformity with the interpretation of the Supreme Court mandate as made by the Virginia Supreme Court.

Also before this Court were two motions to dismiss as to individually-named, defendants, with the exception of L. M. Hasbrouck, Raymond Fieberkorn, and R. J. Johnson.

Said motions to dismiss are hereby granted, and it is so ordered.

For the reason that this is a class action and that there are only the above three named individual defendants remaining in this matter, this Court hereby, *sua sponte*, orders this matter dismissed as to the remaining three also.

So there will be no misunderstanding, the remaining defendants herein are The Brotherhood of Railroad Trainmen and all members, agents and officers of The Brotherhood of Railroad Trainmen in the State of Michigan.

[460]

Counsel for plaintiff is hereby directed to redraft the proposed judgment submitted to this Court, omitting from the title thereof the individually-named defendants against whom this action has now been dismissed, and present said corrected judgment forthwith to this Court for signature.

It is so orderd.

/s/ John C. Dalton,
Circuit Judge.

**Addendum:

The 1966 Virginia case above referred to is *Brotherhood of Railroad Trainmen v. Commonwealth*, 207 Virginia, 182; 149 SE 2d, 265.

Dated: May 24, 1968.

JUDGMENT

(Circuit Court For The County of Jackson)

At a session of said Court held in the Circuit Court Room, County Building, Jackson, Michigan, this 27th day of May, 1968,

Present: Honorable John C. Dalton, Circuit Judge.

This Court having heretofore and on the 14th day of September, 1962, entered its decree in favor of plaintiff and against defendants in this cause and said decree having been appealed to the Supreme Court of Michigan and having been remanded to this Court for proceedings, not inconsistent with the decision of the United States Supreme Court in the case of *Commonwealth of Virginia ex rel Virginia State Bar v. Brotherhood of Rrailroad Trainmen,* [461]

and plaintiff having filed Motion to Enter Judgment, to which Motion a copy of said proposed judgment was attached and the court having heard the arguments of Counsel, and having duly considered said Motion and proposed judgment and being fully advised in the premises,

Therefore, on motion of counsel for plaintiff, it is ordered and adjudged that defendants herein be, and they are now permanently restrained and enjoined from giving or furnishing legal advice to its members or their families; from informing any lawyer or lawyers that an accident has been suffered by a member or non-member of the said Brotherhood and furnishing the name and address of such injured or deceased person for the purpose of obtaining legal employment for any lawyer; from stating or suggesting that a recommended lawyer will defray expenses of any kind or make advances for any purpose to such

injured persons or their families pending settlement of their claim; from controlling, directly or indirectly, the fees charged or to be charged by any lawyer; from accepting or receiving compensation of any kind, directly or indirectly, for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise; from sharing in any manner in the legal fees of any lawyer or countenancing the splitting of or sharing in such fees with any layman or lay agency; and from sharing in any recovery for personal injury or death by gift, assignment or otherwise.

John C. Dalton,
Circuit Judge.

A true copy, Marie Lyons, Deputy Clerk.

* * * * *

[463]

CLAIM OF APPEAL

(Filed June 13, 1968)

(Court of Appeals)

The Brotherhood of Railroad Trainmen, and all members, agents and officers of the Brotherhood of Railroad Trainmen of the State of Michigan, Defendants, Claim an Appeal from the Judgment of the Court entered in the Jackson County Circuit Court on May 27, 1968 by Hon. John C. Dalton, Jackson County Circuit Judge, in the case of *The State Bar of Michigan, Plaintiff, v. The Brotherhood of Railroad Trainmen,* and all members, agents and

officers of the Brotherhood of Railroad Trainmen of the State of Michigan, File No. T-640.

/s/ Walter M. Nelson,
Attorney for defendants-appellants,
1538 Dime Building,
Detroit, Michigan 48226.
WOodward 2-8351

Henslee, Monek & Henslee,
/s/ By John J. Naughton,
Of counsel for defendants-appellants,
120 Madison Building,
Chicago, Illinois 60602.
782-5925

Dated: June 13, 1968.

* * * * *

[470]

TRANSCRIPT OF PROCEEDINGS HAD ON FEBRUARY 5, 1965

(Filed October 4, 1968)

Before: Honorable John C. Dalton, Circuit Judge.

Appearances: Kelly, Kelly and Kelly, Esqs., by Philip C. Kelly, Esq., 210 West Franklin Street, Jackson, Michigan, for the plaintiff; John J. Naughton, Esq., 120 West Madison Street, Chicago, Illinois, for the defendants.

* * * * *

(3)

Jackson, Michigan,
Friday, February 5, 1965,
9:20 A.M.

Mr. Naughton: Your Honor, please, Mr. Walter M. Nelson is now my associate counsel in this case, but he does not appear to have arrived. He is coming here from Detroit.

Shall we proceed without him?

The Court: Well, if you think he will be here shortly, why, I think we ought to give him reasonable time. There may be some reason why he has been delayed.

I do not want to proceed without him.

Mr. Naughton: Your Honor, please, I believe all he will do is introduce me. I am willing to do the entire speaking without him taking any active participation in any of it.

The Court: All right, then. Let us proceed.

Mr. Kelly: We have a motion before the Court this morning, your Honor, pursuant to the opinion of the Michigan Supreme Court.

The Court: Mr. Kelly, I do not care to interrupt you, but just one moment.

Mr. Kelly: The motion is under the—

[471]

(4) The Court: I beg your pardon.

This is a motion for further proceedings pursuant to the opinion rendered in the Supreme Court recently, is that it?

Mr. Kelly: That is correct, your Honor, remanding it to this Court for further proceedings not inconsistent with the United States Supreme Court opinion in the Virginia case.

The Michigan Supreme Court opinion included this language: "—we remand with permission for amendment of

plaintiff's bill to seek, if it be so advised, relief not inconsistent with the Supreme Court's said opinion."

Mr. Hall, General Counsel for the State Bar, is out of the state this week, but we have conferred concerning the present status of the case and thought the proper way to bring this back before the Court was by this general motion.

It is my belief—I think Mr. Hall concurs in it—that the plaintiff does not care to amend the complaint; but we are informed that the Trial Court in the Virginia case has filed an opinion and entered an amended decree pursuant to the remand from the United States Supreme Court in that case.

I believe that the plaintiff or State Bar of (5) Michigan will, with leave of the Court, for which we pray, present this Court a further brief directed to the revision of the decree of this Court on terms not inconsistent with the United States Supreme Court opinion in the Virginia Case.

I do not know what the defendant may wish to do, but that is the position of the State Bar on the present status of the proceedings. We would like, in other words to submit a memorandum brief to this Court directed to the method of revising the decree which this Court has entered.

[472]

The Court: Mr. Naughton.

Mr. Naughton: May it please the Court, since this case was last before it, this Court, the Court wrote an opinion, and in that opinion it stated correctly and perhaps with prophecy that the nub of the proceedings here was the recommendation of counsel by members of the Brotherhood of Railroad Trainmen.

Subsequently the Supreme Court of the United States has entered a decree in *Brotherhood of Railroad Trainmen v. The State Bar of Virginia.* In that opinion the Supreme Court of the United States squarely holds that the plan of the Brotherhood of Railroad Trainmen is protected by rights guaranteed by the First Amendment to the Constitution of the United States, specifically being (6) the rights of freedom of speech and freedom of association.

Now this cause has been remanded to this Court by the Supreme Court of Michigan for proceedings not inconsistent with the opinion of the Supreme Court of the United States.

As counsel has pointed out, the Supreme Court of Michigan has specifically granted permission for amendment of plaintiff's bill of complaint. This is an indication as to the thinking of the Supreme Court of Michigan, that an amendment of the bill of particulars is necessary in order that any relief be granted.

It, of course, is the position here of the Brotherhood of Railroad Trainmen that the present bill is based almost exclusively on the allegations taken from findings in the Illinois Supreme Court decision and is relying primarily for relief upon the statute of the State of Michigan dealing with solicitation, a statute which under the opinion of the Supreme Court of the United States must be held to be invalid as applied to the trainmen just as similar statutes

[473]

in the State of Virginia were held invalid as applied to the National Association for the Advancement of Colored People in *NAACP v. Button.*

When that case was decided the relief granted there flowed over into the *Brotherhood* Case, so when the (7)

State Bar of Virginia came before the Supreme Court they did not rely upon the statute at all.

It seems to me that the State Bar of Michigan is in the same position here. If it seeks relief in this case, it must rely on the statute.

In any event, it seems to me that before further pleadings, before further briefing can be had in this case, that the purpose of pleadings should be required; that is, that there should be a framing of the issues so we know what we are discussing in this case.

Now, as to the pleadings filed on behalf of the Brotherhood of Railroad Trainmen, the situation is that we are now talking about this case in 1965 on pleadings filed in 1959.

The voice of the injunction has to speak as of the time in which it is issued. To ask for an injunction here with a six-year gap and with an intervening opinion by the Supreme Court of the United States in which constitutional rights of my client have been established and confirmed, it seems to me is not a proper proceedings, and that request should be denied.

In any event, in this long interim, I would like to suggest to the Court that the defendants here are no longer officers of the trainmen to a great extent. (8) H. F. McCall is dead. I would suggest his death is of record. Other defendants, Frank Carr, L. E. Singer, R. J. Snow, and W. C. Roryell, are retired from employment and retired from the brotherhood; W. T. Ellsworth is retired from railroad employment and is now a nonresident of the State

[474]

of Michigan residing in Bradenton, Florida; and W. E. B. Chase is no longer a resident of Michigan, having become

a citizen of the State of Ohio. He is now general secretary-treasurer of the International Organization of the Brotherhood of Railroad Trainmen.

In all the circumstances, I feel that, if the State Bar refuses to amend, this cause should be dismissed at this time.

Thank you, your Honor.

Mr. Kelly: The Court is cognizant of the fact that this is a class action; so it is expressly stated in this bill of complaint. If the officers change, that does not oust the Court of jurisdiction on the decree as entered by this Court and which is a subject of revision under the decision of the Supreme Court of this state.

I do not say to the Court here this morning that the State Bar will not or might not amend its complaint if that should appear necessary or proper in the course of the proceedings.

(9) At the present time, it is the mind of the State Bar, through its counsel, that the record in this case as made will support a decree granting relief to the State Bar in somewhat altered terms, perhaps, than those of the existing decree and not inconsistent with the United States Supreme Court opinion in the Virginia case.

We wish to present our views on the matter to the Court at this time by way of a brief, and it may be that some further proceedings may follow the submission of the brief or may accompany the brief.

The matter—I think all parties recognize—is not one in the usual course of litigation in this or any other court and requires some study as to the future course of litigation to a degree, and all we ask is that permission, a reasonable time to present our views to the Court.

[475]

The Court: I do not believe it is anything that the Court should decide off the cuff here this morning, that is for sure.

I wish counsel would present their respective positions to me in a memorandum brief.

Mr. Kelly, of the State Bar, of course, will file their brief first.

Can you have it filed in what,—

Mr. Kelly: (Interrupting) Mr. Hall—

(10) The Court: (Continuing) twenty days? Twenty days.

If you have no objection to thirty days, we will give counsel the same time.

Any objection, Mr. Naughton?

Mr. Naughton: To the time schedule?

The Court: Yes.

Mr. Naughton: No, your Honor.

The Court: Well then, the State Bar of Michigan will file their memorandum brief within twenty days and the—

Mr. Kelly: Just a minute, your Honor. May I interrupt?

The Court: I mean thirty days.

Mr. Kelly: I was going to say that it is necessary for me to work with Mr. Hall on this matter. I am going to be out of the state next week. He is out of the state now. There may be some difficulty in meeting a thirty-day schedule in a matter of this kind, and I would like to be able to reserve at least tentatively the right to ask for a further extension if it becomes necessary.

I will assure the Court that counsel for the State Bar will proceed as promptly as possible.

The Court: Well, let us cross that bridge when (11) we get to it.

[476]

Mr. Kelly: Yes. All right.

The Court: In the event there is any extension, why, defendants' counsel will be extended the same courtesy.

Mr. Naughton: Thank you, your Honor.

The Court: So for the time being, let the record show that this matter will stand continued on a day-to-day basis pending the submission of briefs by counsel presenting their respective positions; and, after defendants have filed their brief, if in the event a reply is desired to be made by plaintiff, then I think, ten days should be sufficient for that.

I think we have covered the time schedule pretty well here. And I think at this time, also—I believe I have the right, anyway, but so there will be no misunderstanding about it—after the Court receives the briefs, it reserves the right to notify counsel to appear for oral argument.

Mr. Naughton: If your Honor please, any later oral argument that you have, can it be set in an afternoon setting, because it is relatively inconvenient for Mr. Nelson to get here? He is approximately eighty years old, and I know he has difficulty driving.

(12) The Court: Yes. We often do that to accommodate out-of-town counsel. We can arrange that.

[477] (Certificate of Court Reporter omitted in printing.)

[478]

TRANSCRIPT OF PROCEEDINGS HAD ON MAY 3, 1968

(14) Before: Honorable John C. Dalton, Circuit Judge.

Appearances: Kelly, Kelly and Kelly, Esqs., by Phillip C. Kelly, Esq., 210 West Franklin Street, Jackson, Michigan, for the plaintiff; Walter M. Nelson, Esq., 1538 Dime Building, Detroit, Michigan, and (15) John J. Naughton, Esq., 120 Madison Street, Chicago, Illinois, of counsel, for the defendants.

(16)

Jackson, Michigan,
Friday, May 3, 1968,
11:02 A.M.

The Court: Mr. Kelly.

Mr. Kelly: May it please the Court—

Mr. Naughton: Your Honor please, is the reporter present.

The Court: Pardon?

Mr. Naughton: Is the reporter present?

The Court: Yes.

Mr. Naughton: I thought it was the clerk.

The Court: No, no.

Mr. Naughton Before we begin on the motion, I have a motion which I filed in 1965 to dismiss parties defendant. I would think, your Honor, that that should be disposed of first.

The Court: This is the motion that we held in abeyance pending the opinion, is that correct?

Mr. Naughton: No. I think it was another motion we held in abeyance pending the opinion, which was a motion

to put the 1965, I believe, decree in Virginia in effect here in Michigan. So far as I know, no motion to stay considering this motion was ever made.

[479]

(17) Mr. Kelly: I would like for the purpose of the record, if the Court please, to present the motion which is duly noticed for this morning for consideration and determination by the Court.

I have no independent recollection of the motion which Mr. Naughton refers to. I have not had time to check the file this morning.

If there is a motion before the Court and it is in order to be considered by the Court, I would have no objection, of course, to that prior to this judgment going into effect. As I understand it, only the number of defendants whom this amended judgment would control. Or govern. Is that right, Mr. Naughton? In other words, you are asking them, certain defendants, to be dismissed.

Mr. Naughton: All said four defendants.

Mr. Kelly: Yes. Well, was that ever argued here or just filed?

Mr. Naughton: It was filed, yes; and I have seen nothing in opposition to it, because I don't believe there very well could be. It is taken from the records of The Brotherhood of Railroad Trainmen, the affidavit by the general secretary-treasurer in Cleveland, and that organization state, for example, that first gentleman who is on it here no longer resides in Michigan.

(18) Mr. Kelly: This file has become rather outsize over the period of time since it has been pending, and I certainly have no independent recollection of this motion. If

it was served on me, it is somewhere in my office. If I have not answered, I shall do so.

But we are here this morning on a duly-noticed motion. Counsel is here from out of the city and out of the state. I think it is practical to present it and have the Court take it under consideration with whatever preliminary consideration might be given to the motion of defendant which was referred to here this morning and which I am not prepared

[480]

to answer. If I haven't answered it, I shall file an answer before expecting the Court to pass on the pending motion here. Rather than to adjourn this and have these counsel come back another time.

Mr. Naughton I am not requesting any adjournment, your Honor.

Mr. Kelly: All right.

The Court: The motion to dismiss was never noticed for hearing according to the file, Mr. Naughton.

Mr. Naughton: Yes, I understand that, your Honor; but I think that the filing of it plus the awaiting the further order of this Court would permit it to be brought up on the date which we would be present.

(19) Both Mr. Nelson and I are not from Jackson. It is a motion, I think, which has lately come, of course, and I see no particular demand that we notice it so shortly, your Honor.

Mr. Kelly: I never heard of a motion filed without being noticed.

The Court: Let's proceed with the other motion. There will be no action taken by the Court on the other motion this morning, pending disposition of the other motion. I

am talking about Mr. Naughton's motion to dismiss. It may be that Mr. Naughton's motion to dismiss will raise no problem. If it raises no problem, why, we haven't anything to be concerned about.

So let's proceed with your motion, Mr. Kelly.

Mr. Kelly: Might I say this on the record: that, as stated by the Court here, a motion filed some two or more years ago and never noticed is not before the Court properly and will not be before the Court in my opinion unless and until counsel wishes to notice it in due form, at which time if that should occur I will take such action an may be indicated.

[481]

On the motion which is noticed for this morning for the Court to enter a judgment I am going to be as brief as the facts and circumstances may allow.

(20) As the record will show, this Court entered a decree on the 14th of September, 1962, in this matter; the decree being in favor of the the plaintiff and against the defendants following full trial and hearing before the Court, at which time both parties, all parties, were represented by counsel.

Following the entry of the decree, defendants appealed to the Supreme Court of Michigan. By the time the appeal was scheduled for hearing in the Supreme Court of Michigan, the United States Supreme Court had entered a judgment or a decision in a similar matter in which the issues were substantially similar to those in this case, because of which the Supreme Court of Michigan remanded this case back to this court for proceedings not inconsistent with the decision of the United States Supreme Court in the case

of *Commonwealth of Virginia* ex rel *Virginia State Bar against Brotherhood of Railroad Trainmen.*

Now, we had been awaiting the decision of the United States Supreme Court since that time, there having been further proceedings in the trial court and in the appellate court of the Commonwealth of Virginia, resulting in an amendment of their decree which went again to the United States Supreme Court on a petition for writ of certiorari by the Commonwealth of Virginia to amend the amended decree (21) of the court of Virginia, and which was denied by the United States Supreme Court some months ago. Some year or so ago, I believe.

That certiorari application and its denial was followed by an additional amendment of the Virginia decree which contained pertinent provisions which I have incorporated in the proposed judgment submitted to this Court and

[482]

moved for signing by this Court; and I have attached to the plaintiff's motion the language of the Virginia decree, which I ask this Court to incorporate in the proposed judgment attached to our motion, and that language reads as follows:—and I am now reading from the Virginia decree so that the Court may, if he wished, follow the proposed judgment submitted by plaintiff here.

It states as follows. I quote:

> "The court doth adjudge, order, and decree that The Brotherhood of Railroad Trainmen, its officers, agents, servants, employees, members and anyone acting in its behalf"—and this is language pertinent to the issue here—" be, and they now are, permanently restrained and enjoined from giving or furnishing legal advice to its members or their families; from in-

forming any lawyer or lawyers that an accident has been suffered by a member or non-member of the said Brotherhood and furnishing the (22) name and address of such injured or deceased person for the purpose of obtaining legal employment for any lawyer; from stating or suggesting that a recommended lawyer will defray expenses of any kind or make advances for any purpose to such injured persons or their families pending settlement of their claims; from controlling, directly or indirectly, the fees charged or to be charged by any lawyer; from accepting or receiving compensation of any kind, directly or indirectly, for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise; from sharing in any manner in the legal fees of any lawyer or countenancing the splitting of or sharing in such fees with any layman or lay agency; and from sharing in any recovery for

[483]

personal injury or death by gift, assignment or otherwise."

We have in this motion and in this proposed judgment to the best of our ability and understanding of the decision of the Supreme Court of Michigan in remanding this case to this Court for proceedings not inconsistent with the United States Supreme Court in their case—we have followed that language word for word.

We move that the Court enter judgment in conformity and following that language as directed by the Supreme Court of this state.

(23) The Court: Mr. Naughton, are you going to make the argument?

Mr. Naughton: Yes, your Honor.

The Court: All right.

Mr. Naughton: If the Court please, and counsel, preliminary to discussing the motion which we agree is properly before this Court, we would like to point out that the notice goes only to the Chicago Office; that is to the firm with which I am associated, and wasn't sent to Mr. Nelson in Detroit. I feel that any further matters in this case should notice Mr. Nelson also.

Additionally and preparatorily also, the last time we were before you in 1965 I requested matters that would be brought before this Court would be brought in the late afternoon because of the difficulty of Mr. Nelson in getting to Jackson at nine-thirty in the morning, I think that that should certainly be done on any further proceeding.

Responding to the statement of facts, I would like to point out to the Court that the trial that was held in this matter was a trial solely of the plaintiff's evidence. At the conclusion of the plaintiff's evidence, the defendant had presented no evidence and waived its rights to present any.

[484]

(24) Since that time the Supreme Court of Michigan has remanded this matter to this Court. In remanding to this Court, the Supreme Court of Michigan specifically pointed out in its opinion, in the last paragraph thereof: "—with permission for amendment of plaintiff's bill to seek, if it be so advised, relief not inconsistent with the Supreme Court's said opinion."

They are referring to the opinion of the United States Supreme Court; where here in 1965 I suggested that there was nothing before this Court. There is no bill of com-

plaint. And that there should be a new one filed before the Court.

This being an equitable action, I think that the fact that no new bill has been filed is affirmatively shown by the record to constitute laches on the part of the State Bar of Michigan to proceeding to the matter before this Court.

I find it difficult to believe that the matter is being presented to this Court as though there weren't another case which is directly relevant to the institution of any decree in this area of free speech and freedom of assembly. That case is the case of *United Mine Workers of America v. Illinois Bar Association,* 389 U.S. 217; 88 Supreme Court 353; 19 Law Edition 2nd, 426, which (25) was handed down by the Supreme Court of the United States on December 5, 1967, some six months after the decree was entered in Virginia, a copy of which is presented to this Court today.

In a previous brief filed in this matter when the 1965 decree of Virginia was presented here, we pointed out that there was a substantially difference between the complaints originally filed in Virginia and the complaint filed here.

The gist of the complaint filed here, as your Honor has recognized in various orders entered in this proceeding,

[485]

was a charge of solicitation against The Brotherhood of Railroad Trainmen.

In Virginia not only was the charge of solicitation raised but also the charge of unauthorized practice of law.

The *Mine Workers* Case deals substantially with these questions of unauthorized practice of law which, I respectfully submit to the Court, are the gist of the decretal provisions of the injunction presented here today. And that

opinion by Mr. Justice Black squarely eliminates from the consideration of this Court substantial portions of the decree submitted to it.

Before bringing to the attention of the Court (26) those provisions, it is important to point out the different factual context from which the *Mine Workers* Case arose as compared to the *Trainmen's* Case.

As your Honor will recall, the *Trainmen's* Case, the Brotherhood plan was a plan of independent regional counsel to enter into a lawyer-client relationship with the members by virtue of the trainmen's attempt to get these individuals together; that is, both lawyer and client, in the interest of seeing that adequate compensation under the Federal Employer's Liability Act was provided to its members.

In the *Mine Workers* Case, the mine workers' attorney is on salary. Every individual of the Mine Workers is entitled to have his compensation case processed by the mine-worker attorney without any fee being charged. Moreover, factually, the attorney and the client never see each other unless the original proceeding before the compensation commission results in a dispute, requiring that a hearing be conducted. The way this is handled, according to the testimony of the *Mine Workers* Case, is that the attorney gets a form and, although the form doesn't show that the claimant wishes to retain an attorney and doesn't mention

[486]

the attorney's name, it is presumed by the attorney that the mere fact that he fills out this form (27) which, basically, contains only the facts of his injury, is, as I say, presumed to indicate that he intends to enter into a lawyer-client relationship with the attorney.

The Illinois Supreme Court, when the position was presented to it, enjoined the Mine Workers, as had the Circuit Court of Sangamon County in the State of Illinois. Upon appeal to the United States Supreme Court, it was, as I have said, reversed.

With particular pertinence, the court states that the Supreme Court of Illinois' attempted distinction of *Railroad Trainmen v. Virginia Bar* and of *NAACP v. Button* was inept. Mr. Justice Black specifically states: "We do not think our decisions in Trainmen and Button can be so narrowly limited."

Now, directing your Honor's attention to the first provision of the decree, which is "—from giving or furnishing legal advice to its members or their families," as I have argued on behalf of the *Trainmen* before, there is absolutely no evidence, no claim in this case, that any such advice was given or furnished to their families, absent the advice that they should get the union lawyer.

I do not think that this is giving or furnishing legal advice, but assuming without conceding that it is the giving or furnishing of legal advice, the *Mine Workers* (28) Case is clearly the giving of legal advice. It is clearly creating a situation where there is no possibility as a practical matter that any other than a mine worker attorney will handle a mine worker's compensation claim.

The second provision of the decree: "—from informing any lawyer or lawyers that an accident has been suffered by a member or non-member and furnishing the name and address of such injured or deceased person for the pur-

[487]

pose of obtaining legal employment for any lawyer," is, we suggest, too vague for enforcement in this ticklish area

of freedom of speech and freedom of assembly. It is unconstitutionally vague as Mr. Justice Brennan stated in *NAACP v. Button*. Precision is the touchstone in this area. There is no precision in that phrase.

Moreover, this matter was taken from an approval thereof by the Virginia Supreme Court of Appeals when it reversed the 1965 Virginia decree. There the court had said that this provision was being consistent because it related solely to any circumstances where the Brotherhood was using this method of encouraging and aiding the solicitation of legal advice by a lawyer who personally was doing the soliciting. This phrase, while glossed on the Virginia decision, isn't glossed here.

The second, the one following that, "—from (29) stating or suggesting defraying of expenses," is something that has nothing to do with the Brotherhood plan. It never had anything to do with the Brotherhood plan. If there is any defraying of expenses by any Brotherhood counsel, it is in accordance with local law and solely his decision and not part of the Brotherhood plan. This is extremely important because only the Brotherhood itself and Brotherhood officers are here defendants in this cause.

Now, the next one, "—from controlling, directly or indirectly, the fees," has been obliterated in this area of freedom of speech by the *Mine Workers* decision; and specifically, the United States Supreme Court, through Mr. Justice Black, states: "Since the operative portion of the *Mine Workers* decree prohibits any financial connection between the attorney and the Union, the decree cannot stand." This is identical.

[488]

Now, of course, we submit that we are in compliance with the Illinois decree, that our client operates along those

lines; that so far as anyone knows this is the way it will operate in the future. But nevertheless the fact remains, if The Brotherhood of Railroad Trainmen want to change to salaried attorneys, they have a constitutional right under that *United Mine Workers* decision, and no decree containing that provision should be permitted.

(30) The other provision, "—from accepting or receiving compensation of any kind, directly or indirectly, for solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise," is also difficult to believe in the context of this lawsuit where the Virginia Supreme Court of Appeals had held that The Brotherhood of Railroad Trainmen had a constitutional right to solicit legal business.

It is also unbelievable in the light of the Mine Workers decision where I cannot think of any method of obtaining business that could be more effective than providing legal services free of charge.

"From sharing in any manner in the legal fees" is also part of the financial connection.

I don't know exactly what benefit the Mine Workers get out of paying the salary of an attorney to represent their injured members, but the fact remains that if they do get some sort of benefit from it, that if the reduced fee to the mine worker client creates some sort of bond between the union and the claimant, that would to my mind create a matter of solidarity so secure that there would never be a chance of a claimant and the union splitting over any issue.

This may not be a financial connection, but (31) your Honor will recall that in the *Hildebrand* Case the Supreme Court of California had held that this nonfinancial benefit

[489]

to the union was a sufficient value to cause the stopping of the operation of the legal-aid plan as it was then constituted in the State of California.

The remainder is also another financial connection between the union and the Brotherhood which has been struck down by *United Mine Workers v. Illinois State Bar Association.*

In speaking of what type of matter might be permissible in this area, Mr. Justice Black states that: "The First Amendment would be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil."

Before closing my discussion of the *Mine Workers* Case, I would like to point out that Mr. Justice Stewart separately concurred in the result, striking down (32) the decretal provisions in *Mine Workers* upon the sole ground, quote: "The disposition of this case is controlled by *Trainmen v. Virginia State Bar.*"

I thought so, too. I always thought that the Virginia case prohibited the entrance of any decree. Unfortunately, the chancellor in Virginia disagreed.

In 1965 he entered another decree. We appealed to the Virginia Supreme Court of Appeals, and that decree was struck down; the court holding, as I say, that the *Trainmen* decision in the United States Supreme Court gave the Brotherhood a constitutional right to solicit legal business.

[490]

Since this 1967 decree, we have petitioned for leave to appeal to the Supreme Court of Appeals of Virginia again. In Virginia there is no such thing as a right to an appeal. The petition for leave to appeal was denied March 6 of this year upon the sole ground that this injunction is substantially the same as their opinion and that, therefore, we were in effect asking the Virginia Supreme Court to hear an appeal from its decision. As a result, no court in Virginia has considered the effect of *Mine Workers* Case in this general area of the operation of the Trainmen plan. The time for petition for certiorari to be filed in that case expires on June 4 of this year.

(33) At the present time it appears that we will not file such a petition, because initially we should have to get a decision by the Supreme Court of the United States that in some manner this action by the Virginia Supreme Court was wrong constitutionally or was a device under their own law, to avoid construction of the *Mine Workers* Case. As I say, the possibilities are that we will not.

In any event, I do not urge upon this Court that it delay its decision in any way in this matter because of that pending possibility.

It does seem to me that the Virginia Supreme Court opinion is at least unwise, because until this decree was entered by the Chancery Court of the City of Richmond there was no possible way that any trainman, whether officer or individual member, in the State of Virginia could be subjected to any type of contempt process; and it may be that the Trainmen are well advised to await any attempt by Virginia to seek a contempt proceeding against *Trainmen's* members or officers.

But in any event we respectfully submit to this Court that in this area the law is developing fast. The American

[491]

Bar Association, as I understand it, will come out with a new code of canons and ethics at its annual (34) meeting in August in Philadelphia this year.

The report of the Availability of Legal Services Committee headed by Mr. McCalpin of St. Louis, Missouri, has been substantially in favor of the development of these legal-service plans.

The federal government, itself through the Office of Economic Opportunity, is providing legal services to the indigent and to people in various areas of the city free of charge.

As an aftermath of the *Gideon* Case, a federal criminal defender program has been provided, including provision of trial counsel with the fees to be paid by the United States Government when it is warranted.

I think that under all these circumstances, your Honor, we are dealing with this matter as though it were part of the past. I think legal services are a matter of the future.

I think that many of the people who have been connected with the *Trainmen* Case may be equally as appalled by what is going to come in the future; but whether we are appalled or not, it is The Brotherhood of Railroad Trainmen has the rights. It intends to exercise them. And under the circumstances no decree should be entered.

Thank you.

(35) The Court: Mr. Kelly.

Mr. Kelly: Counsel makes a fervent plea to this Court to allow the solicitation to go on, and I don't care to dwell

on it at any length, but I say to this Court and for the record that this is far from a moot or occasional question in the State of Michigan affecting the members of the State Bar of Michigan.

[492]

Counsel's firm in Chicago is the firm to which the overwhelming number of FELA cases of Michigan residents are run by the solicitation methods of The Brotherhood of Railroad Trainmen.

Mr. Naughton: I object to this, your Honor.

He is calling something solicitation which the Supreme Court of the United States has said is not.

The Court: It is not.

Mr. Kelly: I didn't interrupt you.

Mr. Naughton: I am just objecting.

The Court: All right.

Mr. Kelly: That was the proof submitted to this Court in which the Court entered its original decree.

Now counsel switches to a UMW case, but I suggest that we keep on the track. It was the Virginia case which the Supreme Court of this state directed this Court to follow in amending its judgment, and it is the provisions (36) of the amended Virginia decree which I have incorporated in the proposed judgment.

Counsel picks apart the Virginia decree, says it is all wrong, but it is the exact decree on which the Supreme Court of the United States denied certiorari; and until they do, I think it isn't up to Mr. Naughton to reverse it.

I submit simply this, your Honor: that the remand to this Court was to enter a judgment not inconsistent with

the Virginia decree which is now finalized and which is now the judgment which we submit.

If counsel for the Brotherhood wants to have some other decision, UMW or others, followed in this state, they should direct their argument to the Supreme Court of this state and not to this Court which is under a specific direction as to amending this decree; and I move, your Honor, that it be amended as asked in the motion.

[493]

The Court: As I advised you at the outset, the Court is going to take the disposition of this motion under advisement.

Now, to get back to the motion to dismiss certain defendants and the affidavit which was filed in support thereof: Mr. Naughton and Mr. Nelson, I see no reason why this cannot be noticed for hearing for two weeks (37) from today. Mr. Kelly can get his answer in.

As I stated, perhaps there will be no need for even to hear arguments on it. I don't know at this time. I don't know if Mr. Kelly can answer that at this point.

What I am getting at is this: Let's reserve the question of argument until the whole matter is before the Court and, if there are to be arguments, why, it will be upon written request of either party and the date to be fixed by the Court.

Is that agreeable?

Mr. Naughton: That's agreeable with me, your Honor.

I believe it is my duty to point out to your Honor that since this was filed I have rechecked this and I can find that only Mr. Hasbrouck and Mr. Fieberkorn are officers of the Trainmen.

Mr. Johnson and Mr. Russell, I may find out, are no longer with the Trainmen. I will check them. If they are not, I will find an additional affidavit, I suppose, and ask that it be joined with this one.

The Court: This is a matter of mechanics, so we are talking about time actually here.

How long do you think it would take you to do (38) that? In other words, what I am getting at is—

Mr. Naughton: I think two weeks can still hold off the notice. It shouldn't take me more than a week. The Brotherhood office must have the information.

The Court: So within a period of two weeks Mr. Kelly will know where he stands.

[494]

Mr. Naughton: Yes, sir.

The Court: So he can proceed accordingly. And then, as I stated, after Mr. Kelly's answer is filed to your motion, why, upon request from either party if they wish to have arguments on the matter, why, the Court will fix a date for argument.

Is that agreeable?

Mr. Naughton: Yes, your Honor.

Mr. Kelly: Yes, your Honor. Do I understand—

The Court: You sit tight until Mr. Naughton files his papers and notices it, and perhaps with amendments to the motion to include some others if there are others to be included.

Mr. Kelly: This is to be done within the two-week period that Mr. Naughton says is ample, and not to make the argument two weeks from now at the time he gets whatever amendment he has.

The Court: No.

(39) Mr. Kelly: I will answer it.

The Court: I specifically provided in the disposition I made here that he would have this accomplished in two weeks. You file your answer. And then after you filed your answer, I will say that if either counsel wishes to have oral argument of that motion, that request for the same will be made within ten days after filing and service of your answer to the motion.

That leaves one loophole. How long will it take you to answer?

Mr. Kelly: Me?

The Court: Yes.

Mr. Kelly: I can't answer that until I see it.

The Court: Well—

Mr. Kelly: But I will assure the Court I will get it here.

[495]

The Court: It would seem ten days to answer should be ample.

Mr. Kelly: I would think so.

The Court: You have your answer in in ten days.

And then ten days after the filing and service of your answer, if there are to be oral arguments, they may be had upon request from either counsel and the date (40) thereof fixed by the Court, and counsel notified.

We will stand recessed.

[495] (Certificate of Court Reporter omitted in printing.)

[496] EXHIBIT B, The Constitution of the Brotherhood of Railroad Trainmen omitted in printing.

[497]

43/Oct. 1969

STATE OF MICHIGAN

SUPREME COURT

THE STATE BAR OF MICHIGAN,
Plaintiff and Appellee,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, and all other members, agents and officers of the Brotherhood of Railroad Trainmen of the State of Michigan,
Defendants and Appellants

BEFORE THE ENTIRE BENCH

BLACK, J.

In January of 1964 this Court ordered that *State Bar of Michigan v. Brotherhood of Railroad Trainmen*, our Docket No. 50093, stand abeyant "pending final determination, by the Supreme Court of the United States, of the case of *Railroad Trainmen v. Virginia State Bar*, Docket No. 34, certiorari granted 372 US 905."* April 20, 1964 the Supreme Court decided the docketed cause thus brought up on certiorari. *Brotherhood of Railroad Trainmen v. Virginia ex rel Virginia State Bar* (1964), 377 US 1, 84 S Ct 1113, 12 L ed 2d 89. That court vacated the injunctive

* The order is quoted in full, *State Bar of Michigan v. Brotherhood of Railroad Trainmen* (1965), 374 Mich at 154, 155.

[498]

decree which had been entered and affirmed in Virginia,* and "remanded for proceedings not inconsistent with this opinion."

October 7, 1964 No. 50093 was resubmitted. January 4, 1965 we reversed and remanded the decree which in the Jackson circuit had been entered September 14, 1962, adding this:

> "Since a public question of moment is involved, we remand with permission for amendment of plaintiff's bill to seek, if it be so advised, relief not inconsistent with the Supreme Court's said opinion." (*State Bar of Michigan v. Brotherhood of Railroad Trainmen*, 374 Mich 152, 155).

The ensuing events of present concern appear in *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel. Virginia State Bar* (1966), 207 Va 182, 149 SE 2d 265 (cert. den. Jan. 16, 1967, 385 US 1027, 17 L ed 2d 675, 87 S Ct 754), and thereafter in the Jackson county circuit court upon remand as ordered. We take up these events in order. The *Virginia Case* and its history comes first.

Through its Commonwealth the Virginia State Bar sued the Brotherhood and others, in the Chancery Court of Richmond, Virginia, to enjoin the carrying on of a "plan" of activity which, according to the Bar, constituted the solicitation of legal business and the unauthorized prac-

---

* This Virginia decree is known as "the 1962 decree." It includes the Virginia chancellor's factual findings. See footnote (1), *Brotherhood v. Commonwealth, infra.*

[499]

tice of law in Virginia. The suit was planted upon allegation that the Brotherhood's plan is that of advising its injured members and their families to obtain legal advice prior to making settlement of claims against their employers for injury or death; that the plan results in the channeling of legal employment to particular lawyers approved by the Brotherhood; that the Brotherhood maintains a Department of Legal Counsel for the purposes of the plan, and that the plan violates the laws of Virginia and the ethical codes of the legal profession.

The Chancery Court found that the activities of the Brotherhood pursuant to such plan consisted not only of illegal solicitation of law business but did result in "channeling all, or substantially all' of the employee versus employer business to lawyers chosen by the Brotherhood's Department of Legal Counsel. Upon these and auxiliary findings the chancellor enjoined the complained of activities in Virginia.

The highest court of Virginia affirmed summarily as against the Brotherhood's appeal to the First and Fourteenth Amendments (see *Brotherhood v. Commonwealth, supra* at 2); whereupon the Supreme Court granted certiorari to consider the constitutional question "in the light of our present decision in *NAACP v. Button* (1963), 371 US 415, 9 L ed 2d 405, 83 S Ct 328." The plan of the Brotherhood thus enjoined was analyzed and, within the scope of the questions decided, approved by the Supreme Court in the cited decision of April 20, 1964. The Supreme Court said:

[500]

> "The result of the plan, the Brotherhood admits, is to channel legal employment to the particular lawyers approved by the Brotherhood as legally and morally competent to handle injury claims for members and their families. It is the injunction against this particular practice which the Brotherhood, on behalf of its members, contends denies them rights guaranteed by the First and Fourteenth Amendments. We agree with this contention." (p 5)

Then the Supreme Court confronted the organized Bar Associations of the several States, and the subsequently objecting American Bar Association, with this specific ruling:

> We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall. And, of course, lawyers accepting employment under this constitutionally protected plan have a like protection which the State cannot abridge." (p 8)

The appellee-respondent duly petitioned for rehearing. The American Bar Association moved for leave to file a brief *amicus* in support of the petition for rehearing. The motion was granted June 1, 1964 and, on the same day, the petition for rehearing was denied. (377 US 960, 12 L ed 2d 505, 84 S Ct 1625)

The proceedings on remand to Virginia appear at length in the cited 1966 decision of the Supreme Court of Appeals of Virginia. That court, seeking conformity with the Supreme Court's 1964 opinion, analyzed it with manifest care and, we add, with the deferential respect subordinates owe

[501]

to their constitutional superiors.* Since the pleadings, factual record and judgment now here duplicate substantially the pleadings, factual record and now finally effective decree which in Virginia was entered on remand, we need but say that this court of another State must now determine whether that decree comports constitutionally with the aforesaid 1964 opinion. If it does, the Jackson circuit's decretal judgment of May 27, 1968 (now before us for review) should be affirmed. If not, that judgment should be reversed.

---

* Respect for the Supreme Court's majority opinion is not quite so evident in the December 1965 issue of Virginia Law Review, "The Brotherhood Case," p 1693. We find portents for our case as well as restrained criticism in this paragraph (p 1697):

> "It is submitted that the Supreme Court's opinion in the *Brotherhood* case, reflecting in its befuddling language the Court's lack of consensus, will prove of only transitory importance. However, it is hoped that it will speed the framing of clearer standards by which to judge practices similar to those advocated by the Brotherhood and sought to be regulated by Virginia. Thus, if the case reaches the Court again, little will be gained unless a definite choice is made between balancing and absolutism. It is also submitted that a balancing test is more appropriate."

Now for the instant case. It was commenced January 28, 1959 in the Jackson circuit for injunctive relief against the same "activities"—occurring as alleged in Michigan—which in Virginia were considered by the Virginia courts and then by the Supreme Court. Decree for the State Bar having entered September 14, 1962, the *Brotherhood* appealed. As seen above, that appeal resulted in reversal and remand for further proceedings not inconsistent with the Supreme Court's opinion of 1964 *Brotherhood*.
[502]

On remand the State Bar did not avail itself of the accorded right to amend. It waited instead for disposition on remand of the *Virginia Case* and then, setting forth the subsequent proceedings in the *Virginia Case* we have outlined, moved for entry of "a judgment in this cause in conformity to said Final Order of the Chancery Court of the City of Richmond, Virginia, as aforesaid."

Legal arguments followed, without additional proofs. The Brotherhood insisted and now insists that the Virginia decree does not conform with 1964 *Brotherhood*. The State Bar argued and argues here that the decretal judgment proposed by it and entered below May 27, 1968 conforms with the now-final Virginia decree. By-passing the Court of Appeals, we granted leave to review that judgment September 12, 1968. The appeal was submitted December 9 last.

First: Our decision will be understood better by making initial reference to a question posed and answer made by counsel during oral argument. Our answer is that when the Supreme Court denied certiorari to review 1964 *Brotherhood* that act made no precedent. Neither did it import an "expression of opinion upon the merits of the case, as

the bar has been told many times" (Holmes, J., writing for the Court in *United States v. Carver* [1923], 260 US 482, 490, 67 L ed 361, 43 S Ct 181). As written separately by Mr. Justice Frankfurter, upon denial of certiorari in *State of Maryland v. Baltimore Radio Show* (1950), 338 US 912, 917, 94 L ed 562, 70 S Ct 252:

[503]

> "A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari to a State court."

This view, that no precedent results from denial of review, was written into our own jurisprudence as far back as 1935 (*Malooly v. York Heating & Ventilating Corp.*, 270 Mich 240, 247. There it remains. See *Great Lakes Realty Corp. v. Peters* (1953), 336 Mich 325, 328, 329, comment in *Williams v. City of Detroit* (1961), 364 Mich 231, 288, and our order denying leave to appeal, *Frishett v. State Farm Mut. Automobile Ins. Co.* (1966), 378 Mich 733, 734.

We proceed accordingly to determine whether the present Virginia decree and therefore the duplicative decretal judgment entered by the Jackson circuit,* are consistent with 1964 *Brotherhood*. No reliance may be placed upon the fact that, in 1967, the Brotherhood's petition for writ of certiorari was denied. The situation for us is the same as if the Brotherhood had filed no petition.

It is right to begin by saying that the adjudicatory result in Michigan *ought* to be the same as was reached finally

---

* See appendix.

in Virginia. Each suit as commenced, tried and reviewed has been purely equitable from the beginning. The subject matter of both is the extent to which the same planned activity of the Brotherhood comes within the constitutionally exercised jurisdiction of equity. It would reproach the tenet of equal justice under law if, in Virginia, the [504]

decree effective there should vary from the decretal relief which for our part is due to be made effective in Michigan. Starting from such premise, the thrust of which is a reasonable if rebuttable presumption that the Supreme Court is not apt to order that either the Brotherhood or our State Bar suffer or enjoy more in Michigan than do the corresponding antagonists in Virginia, we submit the following compendium of precise convictions reached by comparing *Brotherhood* as decided by the Supreme Court in 1964 with *Brotherhood* as finally settled in Virginia.

We find that the distinctive hub of 1964 *Brotherhood* turns upon desire of the Court, founded as that desire is upon the First and Fourteenth Amendments, that the Brotherhood remain free to help "injured workers or their families by recommending that they not settle without a lawyer and by recommending certain lawyers selected by the Brotherhood * * *." (footnote 9, 377 US at 5). Further, although admitting some doubt from here on, we find upon thoughtful comparison of the 1962 decree with the succeeding 1966 decree as entered successively in Virginia, that the highest court of that State has fairly eliminated such of the objections to the 1962 decree as were made by the Brotherhood and upheld by the Supreme Court. See the successive major excisions from the 1962 decree

which Virginia's Supreme Court of Appeals directed, all italicized by the court and portrayed by footnote (4), [505]

207 Va at 187, particularly the elimination of the 1962 banning of solicitation.

The conclusion reached by the Virginia Supreme Court of Appeals reads (207 Va at 189):

> "[2] We interpret the opinion as denying the State's right to restrain these activities. The Court held that the Brotherhood's activities fell within the protection of the First Amendment guarantees of free speech, petition and assembly. In the Court's opinion, the State had failed to show any appreciable public interest that would justify restraint of the Brotherhood's pursuit of constitutionally protected activities."

All this considered, nothing appears in the Supreme Court's opinion that declares or portends greater constitutional regulation of the practice of law than does the quoted interpretation of the Supreme Court's general if not possibly uncertain language.* We decline accordingly to impute to that Court intent that the Brotherhood of Railroad Trainmen should receive more First and Fourteenth Amendment protection than the State of Virginia now provides for it. Holding, then, that the Jackson cir-

---

* No disrespect is intended. The 1965 writer for the Virginia Law Review may indeed have been right (ante at . .) in observing that the Supreme Court's opinion was couched to obtain some semblance of a consensus. If true, let it be noted that we too know all about that fact of judicial life and the occasional need it creates. See our recent contributory consension of generality signed by 4 Justices only, in the *Third Circuit Case,* December 8, 1969, 383 Mich .....

cuit's decretal judgment of 1968 is in accord with the present Virginia decree, we align ourselves with that decree. In short, this Court is not ready—absent a specific order forwarded from Washington—to grant the Brotherhood more relief in Michigan than it has obtained thus far in Virginia.

Second: The Brotherhood insists that the 1968 decretal judgment denies it the constitutional protection which, in [506]

United Mine Workers of America v. Illinois State Bar Ass'n. (1967), 389 US 217, 19 L ed 2d 426, 88 S Ct 353, was accorded the *Mine Workers' plan* of hiring an attorney on a salary basis to represent its members and their dependents in connection with claims for benefits under the Illinois Workmen's Compensation Act. We do not agree. The narrow question in *Mine Workers* was whether "the operative portion" of the scrutinized Illinois decree, prohibiting "any financial connection between the attorney and the Union," and such other parts of the decree as might be viewed as forbidding that "connection," passed muster under the First and Fourteenth Amendments. The Supreme Court ruled negatively and, as in 1964 *Brotherhood*, vacated the Illinois judgment and decree with remand for further consistent proceedings. The 1968 decretal judgment includes no such prohibition, nor does the Virginia decree of June 13, 1966.

Here we decline to extend or apply *Mine Workers* to our question, a question which in 1965 was sent back to the Jackson circuit for consistency with the 1964 *Brotherhood Case*—that only.

The 1968 decretal judgment, a copy of which we have appended, is affirmed. No Costs.

Thomas E. Brennan, C. J.
Harry F. Kelly, J.
John R. Dethmers, J.
Concurred with
Eugene F. Black, J.

[507]

APPENDIX

(Decretal Judgment Entered May 27, 1968, by the Jackson County Circuit Court)

"This court having heretofore and on the 14th day of September, 1962, entered its decree in favor of plaintiff and against defendants in this cause and said decree having been appealed to the Supreme Court of Michigan and having been remanded to this court for proceedings, not inconsistent with the decision of the United States Supreme Court in the case of *Commonwealth of Virginia ex rel Virginia State Bar v. Brotherhood of Railroad Trainmen*, and plaintiff having filed motion to enter judgment, to which motion a copy of said proposed judgment was attached and the court having heard the arguments of counsel, and having duly considered said motion and proposed judgment and being fully advised in the premises,

"Therefore, on motion of counsel for plaintiff, it is ordered and adjudged that defendants herein be, and they are now permanently restrained and enjoined from giving or furnishing legal advice to its members or their families; from informing any lawyer or lawyers that an accident has been suffered by a member or non-member of the said

Brotherhood and furnishing the name and address of such injured or deceased person for the purpose of obtaining legal employment for any lawyer; from stating or suggesting that a recommended lawyer will defray expenses of any kind or make advances for any purpose to such injured persons or their families pending settlement of their claim; from controlling, directly or indirectly, the fees charged or to be charged by any lawyer; from accepting or receiving compensation of any kind, directly or indirectly, for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise, from sharing in any manner in the legal fees of any lawyer or countenancing the splitting of or sharing in such fees with any layman or lay agency; and from sharing in any recovery for personal injury or death by gift, assignment or otherwise."

[508]

43 Oct 1969

STATE OF MICHIGAN

SUPREME COURT

THE STATE BAR OF MICHIGAN,
Plaintiff and Appellee,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, and all other members, agents and officers of the Brotherhood of Railroad Trainmen of the State of Michigan,
Defendants and Appellants.

BEFORE THE ENTIRE BENCH
ADAMS, J.

This action was begun on January 28, 1959 by the State Bar of Michigan charging the Brotherhood of Railroad Trainmen, through the operation of its Legal Aid Department (subsequently renamed Department of Legal Counsel), with unlawfully and improperly soliciting large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen and directing those cases to Regional Counsel Henslee and associates in Chicago, Illinois.

The defendants admitted that in many instances, but not in all, a "member of the defendant Trainmen calls upon, contacts, or in some other manner explains to an injured member employee, or his bereaved family, the advisability of obtaining a lawyer, or the opinion of a lawyer, and

recommends that they consult with the Legal Counsel designated, and further recommends that the Legal Counsel be retained if a lawyer is to be retained."

[509]

The issue as framed by Mr. Phillip C. Kelly, acting as attorney for the State Bar, was "whether or not a large volume of these cases arising in Michigan reached the office of Regional Counsel Henslee and associates in Chicago over a period of several years during the operation of this legal department."

On June 27, 1961, a hearing was held before the Circuit Judge at which time Mr. David J. Walsh, Supervisor of the Clearing House for the Claims Research Bureau, General Claims Division, of the Association of American Railroads, testified. The testimony of Mr. Walsh consisted of records of FELA claims compiled by the Association of American Railroads and tended to establish that during the period July 1, 1953 through the year 1960 there were 482 such cases and that 218 were handled by the Henslee firm.

Additional history of this case is contained in *State Bar of Michigan v. Brotherhood of Railroad Trainmen* (1965), 374 Mich 152, and in the opinion of Justice Black upon this present appeal.

In *Brotherhood of Railroad Trainmen v. Virginia, ex rel Virginia State Bar* (1964), 377 US 1, 84 S Ct 1113, 12 L ed 2d 89, the United States Supreme Court said (p 8):

> "We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan *for advising workers who are injured to obtain legal advice and for recommending specific lawyers.* Since the part of the decree to which the Brotherhood ob-

jects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall. And, of course, lawyers accepting employment under this constitutionally protected plan have a like protection which the State cannot abridge." (Emphasis added.)

[510] On December 5, 1967, the United States Supreme Court spoke again in the case of *United Mine Workers of America, District 12* v. *Illinois State Bar Association, et al* (1967), 389 U.S. 217, 88 S. Ct. 353, 19 L. ed. 2d 426. In that case the United States Supreme Court held (pp. 221, 222):

> "We hold that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights."

I agree with Justice Black that when the United States Supreme Court denied certiorari in 1967 to review *Brotherhood of Railroad Trainmen* v. *Commonwealth of Virginia ex rel Virginia State Bar* (1966), 207 Va. 182, 149 S.E. 2d 265, that act made no precedent. I disagree with Justice Black that the decretal judgment entered May 27, 1968 by the Jackson County Circuit Court is consistent with 1964 *Brotherhood* or 1967 United Mine Workers.

Even if the decree could be sustained under the decision in *Railroad Trainmen*, it seems clearly evident that the decree is in plain violation of the holding of the United States Supreme Court in *United Mine Workers*.

[511] I would vacate the judgment for the further reason that this is a chancery case in which the State Bar of Michigan seeks injunctive relief. The State Bar failed to amend or update its complaint upon remand by this Court and it failed to produce any proofs, other than the testimony of

Mr. Walsh relating to the period from July 1, 1953 through the year 1960. Neither the trial court nor this Court should afford injunctive relief upon proofs as stale as these, the very most recent of which relate to a period 10 years ago. Furthermore, the evidence is wholly inadequate to sustain the injunctive relief which was granted.

We have repeatedly cautioned against granting injunctive relief prior to full hearing and clear and convincing proofs. See: *Cross Company* v. *UAW Local No. 155 (AFL-CIO)* (1963), 371 Mich. 184; *School District for the City of Holland* v. *Holland Education Association* (1968), 380 Mich. 314.

I would reverse the trial court and vacate the decretal judgment which it entered.

THOMAS M. KAVANAGH, J.

THOMAS M. KAVANAGH, J.
Concurred with
PAUL L. ADAMS, J.

[512]

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 9th day of March in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

The State Bar of Michigan, *Plaintiff*, vs. The Brotherhood of Railroad Trainmen, et al., *Defendants and Appellants*	52106

This cause having been brought to this Court by appeal from the circuit court for the county of Jackson, and having been argued by counsel and due deliberation had thereon, IT IS NOW ORDERED by the Court that the judgment entered May 27, 1968 by the Jackson County Circuit Court be and the same is hereby AFFIRMED. It is further ordered that no costs be allowed.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 7th day of April in the year of our Lord one thousand nine hundred and seventy.

DONALD F. WINTERS,
Clerk.

* * * * *

[532]

Order entered by Supreme Court of Michigan on May 4, 1970 providing:

> "In this cause an application for rehearing having been heretofore filed herein, it is hereby denied."

(Certificate of Clerk to Order omitted in printing)

(Certificate of Clerk to the Certified Record omitted in printing).

File No......

Supreme Court of the United States

OCTOBER TERM, 19

Term No......

ORDER GRANTING PETITION FOR CERTIORARI

Filed ....., *19*

U. S. GOVERNMENT PRINTING OFFICE 550070

Supreme Court of the United States

No. 434 ------, October Term, 19 70

United Transportation Union,

Petitioner,

v.

The State Bar of Michigan

Order allowing certiorari. Filed October 12, -----, 19 70.

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan *is granted.*

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.